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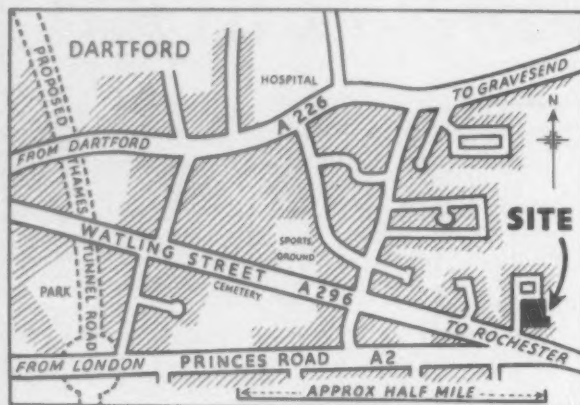


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THE SOLICITORS' JOURNAL



VOLUME 105

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CURRENT TOPICS

Birthday Honours

We congratulate all the lawyers whose names appeared in the Queen's Birthday Honours List and are set out at p. 534 of this issue. We were particularly pleased to find the names of two members of The Law Society amongst the Knights Bachelor, that of the president, Mr. DENYS THEODORE HICKS, and that of Mr. ROBERT JOHN DAVIES, a Llandudno solicitor upon whom the accolade is to be conferred in respect of political and public services in Wales.

Admission to Committee Meetings

THE Public Bodies (Admission to Meetings) Act, 1960, which came into force on 1st June, 1961, provides that: "Any meeting of a local authority or other body exercising public functions . . . shall be open to the public" (s. 1 (1)), and the Act extends "to any committee of the body whose members consist of or include all members of the body" (s. 2 (1)). Some committees of local authorities, especially Finance and General Purposes Committees, usually consist of all members of the council, and several local authorities have sought to avoid the effect of the Act of 1960 by reducing the numbers on those committees. Indeed, the attitude of one councillor was: "If we can evade the Act let us evade it." It may be asked whether councils are justified in taking such steps to enable their committees which would otherwise be open to the public to sit in private, especially as the Act expressly provides that: "A body may, by resolution, exclude the public from a meeting . . . whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings" (s. 1 (2)). The MINISTER OF HOUSING AND LOCAL GOVERNMENT appears to disapprove of the practice, although, in a recent circular issued by the Ministry of Housing and Local Government, he recognises that for small authorities committees consisting of all or nearly all the members of the Council may be the only convenient way to transact business; and that some of these committees may deal with matters which have to be discussed in private. In such cases he concedes that a reduction of the committees by one or two members might be the sensible arrangement, but he says that it would be "quite wrong" to use this device merely to defeat the purposes of the Act and asks any authority which uses it "to make sure that it does not result in the public and Press being excluded from discussion of matters which ought to be openly debated." Many people will sympathise with these sentiments and hope

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that, in so far as it applies to committees of local authorities, the object of this worthwhile piece of legislation will not be defeated before it has had the chance to prove its value.

Publication to Husband

ALTHOUGH for many purposes a husband and wife are regarded as one person, a defamatory statement made to a husband about his wife, or to a wife about her husband, is a sufficient publication: *Wenman v. Ash* (1853), 13 C.B. 836. In a recent case at Lincolnshire Assizes, HINCHCLIFFE, J., awarded damages to a wife in respect of a letter addressed to her falsely alleging that she was a brothel-keeper and a thief because the letter had been published to her husband, who opened it in the mistaken belief that it was an election address. As a general rule, it is "impossible successfully to contend . . . that if a person, in breach of his duty, were to open a letter, and there was no reason to expect that he would commit that breach of duty, the fact that he had opened it and read it would amount to publication by the person who sent it" (per Lord Reading, C.J., in *Huth v. Huth* [1915] 3 K.B. 32). On the other hand, the writer of a defamatory letter may be liable if he knew that the letter would be likely to be opened and read by some person other than the person to whom it was addressed (see, e.g., *Pullman v. Hill* [1891] 1 Q.B. 524), and it would seem that the courts are prepared to allow that husbands are likely to open letters addressed to their wives.

Infants and the Limitation Act

IN a recent case at Leeds Assizes, it appeared that the plaintiff, a haulage hand, who was at the date of the hearing twenty-three years of age, had been injured in the defendants' colliery when he was struck in the back by a set of tubs. The injuries were received on 8th June, 1955, but the writ in the action was not issued until 30th July, 1958, and for this reason, in the normal way, the action would have been statute-barred, because s. 2 (1) of the Limitation Act, 1939, as amended by s. 2 (1) of the Law Reform (Limitation of Actions, etc.) Act, 1954, stipulates that in the case of actions for damages for, *inter alia*, negligence or breach of duty, where the damages claimed by the plaintiff for the negligence or breach of duty consist of or include damages in respect of personal injuries, the action shall be barred after the expiration of three years from the date on which the cause of action accrued. However, in this case there were what MEGAW, J., called "curious circumstances," as the people with whom the plaintiff had lived since he was a baby were not his parents but an uncle and aunt by marriage. The plaintiff's mother had died when he was two days old and, in view of the fact that the plaintiff's father was left with eight other children, the plaintiff had gone to his uncle and aunt. These "curious circumstances" were relevant because s. 22 of the Act of 1939, as amended by s. 2 (2) of the 1954 Act, provides for an extension of the limitation period if it is proved that a plaintiff under disability (in the case in question, infancy) was not, at the time when the right of action accrued to him, "in the custody of a parent." It was conceded that the plaintiff was not "in the custody of a parent" at the time when the right of action accrued and it followed that his action was not statute-barred. This decision may be compared with *Woodward v. Hastings Corporation* [1944] K.B. 671, where, at the material time, the infant plaintiff spent his school holidays at home with his mother, and his father, who was in the Royal Navy, came home on leave and kept in

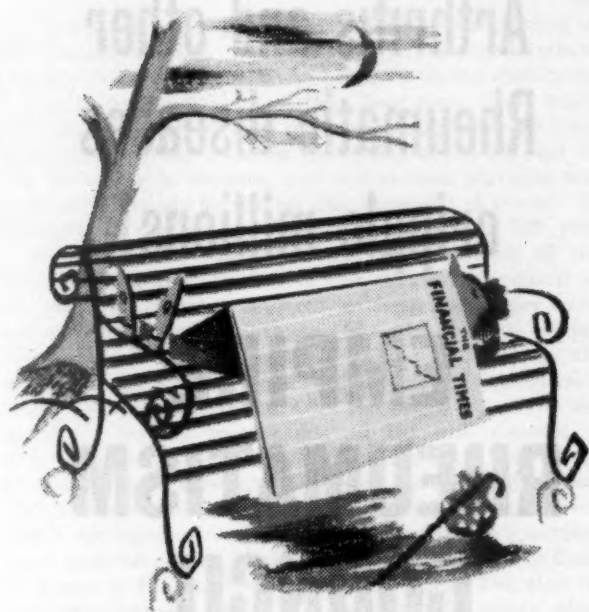
touch with his home by post. It was found that the infant was in the custody of his parents when the right of action accrued.

Avoiding Anarchy

IT is well established that a person is entitled to use reasonable force to defend himself, his property, members of his family and his master or servant against an actual or threatened attack (*Dale v. Wood* (1822), 7 Moore 33), but the force used must be proportionate to the assault (*Cockcroft v. Smith* (1705), 2 Salk. 642). The rights of the defender do not go beyond this, and it is clear that no person is entitled to take the law into his own hands and punish the wrongdoer. This was stressed by Mr. J. F. MILWARD, the stipendiary magistrate, in a recent case at Birmingham Magistrates' Court. Four men believed that another, who had been questioned and released by the police, had attempted to rape a four-year-old girl. They went round to his lodgings and frog-marched him to a car, in which they took him out into the country. There they administered "rough and summary justice" which led to their being convicted of assault occasioning actual bodily harm contrary to s. 47 of the Offences against the Person Act, 1861. The learned magistrate told the four men: "A citizen is entitled to protect himself, his property and other people. But when the crime is past a person is not entitled to indulge in private revenge. That thing only leads to anarchy." It is interesting to note that Mr. Milward said that a person is entitled to protect "other people" as at one time there was some doubt as to whether the right of self-defence extended thus far. However, in *The People v. Keatley* [1954] Ir. R. 12, the court accepted the proposition that "every man has the right of defending any man by reasonable force against unlawful force," and it may be that the seeds of this rule were sown in *Handcock v. Baker* (1800), 2 Bos. & P. 260. In that case the defendants broke and entered the plaintiff's house in order to prevent him from murdering his wife. The plaintiff claimed damages for trespass but his action failed as the court believed that, in the circumstances, the defendants' acts were justifiable. Admittedly, in this case, the assault in question amounted to a felony.

Corruption at the Garage

FOR better or for worse, the days of the compulsory testing of motor vehicles are now upon us and at Reading Magistrates' Court a man was recently fined £2 for attempting to obtain a certificate of roadworthiness by offering a bribe. He was charged with offering 10s. "as an inducement to show him favour by granting a motor test certificate" and it appeared that the proceedings were brought under the Prevention of Corruption Act, 1906. Section 1 (1) of that Act provides, *inter alia*, that an offence is committed by any person who "corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for . . . showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business." A person serving under the Crown or under any corporation or any municipal borough, county, or district council is an "agent" within the meaning of this Act and it has been held that a police constable whilst in the execution of his duty and acting for his employer, the chief constable, comes within this definition: *Graham v. Hart* 1908 S.C. 26. It seems that a garage proprietor authorised to conduct tests is in the same category.



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This is an actual case from SSAFA's files. In order to maintain the strict confidence in which SSAFA works, the names are changed, and the drawing is not a likeness.

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RENT AND TIME

THE late Dr. R. S. Aspinall died at 8.30 in the morning of 25th December, 1954. By his will he left certain leasehold property to his widow for life and then to his son absolutely. Among these leasehold properties, there were three which gave rise to matters of some interest because in two of these leases provision was made for the tenant to pay his rent on 25th December in advance, and in one lease provision was made for him to pay his rent on 25th December in arrear. In *Re Aspinall's Will Trusts; Aspinall v. Aspinall*, p. 529, *post*, it was contended before Buckley, J., on behalf of the remainderman, that all rents which the tenants agreed to pay on 25th December belonged to the testator *inter vivos*, and accordingly on his death they formed part of his capital. The argument was put in this way: rent is due on the morning which is appointed for payment and became payable to the testator the moment after the beginning of the day specified; here it became due on the first moment of 25th December, 1954. Further it was argued that in the eyes of the law the testator was to be deemed to have been alive for the whole of the day on which he died. It followed that if this argument was accepted by the court no apportionment could take place, because it has been held by the Court of Appeal in *Ellis v. Rowbotham* [1900] 1 Q.B. 740, that the Apportionment Act, 1870, did not apply to events which had accrued before the happening of the event by reason of which it was proposed to apply the Act.

Submissions

This argument contained two quite separate but most interesting submissions: first that the rent belonged to the landlord from the first moment of the day on which it was made payable, and secondly that the court would not recognise fractions of a day. Logically, in order to decide whether these rents belonged to the landlord *inter vivos* the judge had to decide first the exact time of the landlord's death.

In support of the argument that the landlord was to be treated as having been alive for the whole of the day on which he died, reliance was placed on *Lester v. Garland* (1808), 15 Ves. 248, and especially on the sentence at p. 257: "The effect is to render the day a sort of indivisible point; so that any act, done in the compass of it, is no more referable to any one, than to any other, portion if it; but the act and the day are co-extensive; and therefore the act cannot properly be said to be passed until the day is passed."

Fractions of a day?

Now it would be very surprising if such a general rule existed, and if it existed it would be even more surprising if it was applicable to landlord and tenant cases; surprising because many of these cases depend on the question whether the payment of rent was made after sunrise and before sunset, and further because in so many cases involving landlord and tenant evidence was adduced of the actual time of the day when payment of rent was made, e.g., *Doe d. Wheeldon v. Paul* (1829), 3 Car. & P. 613. The proposition became even more surprising because this was by no means the first time that a landlord had died on a quarter day, and in all the older cases in which the question had to be considered the point was never taken, and in many of these cases the court admitted evidence of the actual time of death.

Accordingly it was important to consider how far this alleged rule of *Lester v. Garland* was applicable. Did it

have a general application? If it did have a general application was it applicable in particular to the case of landlord and tenant and of a landlord dying on a quarter day?

Upon analysis it will be observed that all *Lester v. Garland* really decided was that when time is allowed from a particular period for a party to do any act the first day is to be reckoned exclusively: see Parke, B., in *Young v. Higgon* (1840), 6 M. & W. 49, at p. 53. Further in *Lester v. Garland* the Master of the Rolls himself said, at the beginning of the paragraph which is quoted in support of the contention that the courts will not recognise fractions of a day, that "it is not necessary to lay down any general rule upon the subject." It is submitted, with respect, that no such general rule requiring the court to ignore fractions of a day exists. This is supported by authority going back to at least 1763, when in *Coombe v. Pitt*, 3 Burr., at p. 1423, Lord Mansfield said: "But though the law does not, in general, allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And I do not see why the very hour may not be so too, where it is necessary and can be done: for it is not like a mathematical point, which cannot be divided." This obiter dictum receives further support in the much more recent case of *Re North; ex parte Hasluck* [1895] 2 Q.B. 264, at p. 269, where Lord Esher said:—

"No general rule exists for the computation of time either under the Bankruptcy Act or any other statute, or, indeed, where time is mentioned in a contract, and the rational mode of computation is to have regard in each case to the purpose for which the computation is to be made. Notwithstanding the elaborate array of authorities which have been cited to us, they seem on being sifted to contain no binding rule to the effect that time must be computed according to a hard and fast rule. . . . To say that by the common law part of a day is the whole of a day is to say something which is contrary to the truth; it is a technical rule which was imposed upon the law with the result of bringing the law into disrepute. It is immaterial whether these older decisions were right in the particular cases; if they, or any of them, laid down any general rule as to the mode of computing of time, that rule has been departed from in recent times, and no longer exists."

In fact Buckley, J., decided in *Re Aspinall's Will Trusts* that no such rule was applicable to the facts before him and accordingly that he could take cognizance of the fact that Dr. Aspinall had died at 8.30 in the morning.

Rent due

This, however, only disposed of one of the contentions put forward on behalf of the remainderman. The second and more formidable contention was that rent was due from the morning of the day when it was payable. This contention was supported by a statement in Foa, 8th ed., at p. 104: "Although there is authority to the effect that rent is not due till midnight the day upon which it is made payable by the reservation, it appears to be now settled that it is due throughout that day, but not in arrear till such day has elapsed." A statement to a similar effect is contained in Woodfall, 26th ed., at p. 346: "Rent is due on the morning of the day appointed for payment, but it is not in arrear until after midnight."

Both these statements are based on the authority of a case decided in 1853, *Dibble v. Bowater*, 2 El. & Bl. 564. In that case at p. 568 Lord Campbell said: "The rent, though due on that day, is not in arrear till the day is elapsed"; and at p. 570 Erle, J., said: "The rent was due at the beginning

of the 25th December, though the tenant had the whole of that day in which to pay."

Meaning of "due"

At first blush the authority of both the modern text-books and the old case seem to be very strong. Again, however, when one considers the matter more closely there are certain unusual and intriguing elements in that authority. To begin with, the word "due" is surely capable of at least two meanings, "due" in the sense of "payable" and "due" in the sense of "exigible." Both Foa and Woodfall appear to be using the word in the sense of exigible, but it is strange that they should rely upon a case which is solely concerned with the construction of a particular statute, the Distress for Rent Act, 1737, s. 1, where the words to be construed were: "From distraining the same for arrears of rent so reserved, due, or made payable." Lord Campbell in his judgment made it clear that "the rent is in one sense due when payable on the quarter day," showing that he there sees the distinction between due and payable and that in his view the rent is only "in one sense" due on the quarter day. Then too Erle, J., makes it perfectly clear that all he was considering was the wording of the particular statute. Thus there seems to be no justification for relying upon passages in judgments concerned with a particular statute in order to frame a general rule relating to the time when rent becomes "due" in the sense of "exigible."

Again, if Foa and Woodfall are correct, it seems beyond understanding why it should have been necessary for Parliament to provide by s. 15 of the Distress for Rent Act, 1737, that "where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon any demise . . . which determined on the death of such tenant for life, . . . the executors . . . of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant . . . if such tenant for life die on the day on which the same was made payable, the whole" of the rent due or a proportion. What this section was aimed at was the case of a tenant for life who granted a lease by virtue of his interest in the land, but not by the virtue of a power to grant leases which was contained in the settlement. Such a lease would end upon the death of the tenant for life, and the question arose, if the tenant for life died on a quarter day, whether the rent payable became part of his estate and so was recoverable by what we would now call his general personal representatives, or whether it was not payable at all, so relieving the tenant from all liability therefor. If the rent

was due in the sense used by Foa and Woodfall on the morning of the day upon which it was payable, this section of the 1737 Act had no significance and was otiose, for the rent was due on the first moment of the day for part of which the tenant was alive.

Four periods

The fact is that as regards the payment of rent time may be divided into four periods. The first period relates to a payment which is made before the rent is made payable under the lease. In this case the tenant does not discharge his obligation to pay rent, and if the landlord should assign his interest in the land, without parting with the rent which has been paid in advance, the assignee can sue the tenant for rent, though of course the tenant can recover the same from his former landlord. Such a period of time comes to an end on the last moment of the day before rent is made payable under the lease. Then there arises a second period of time: this is the period when the rent is payable in the sense that a payment made during that period is a valid discharge of the legal obligation to pay rent; this period starts from the first moment of the day when the rent is payable and ends on the last moment of that day. The third period of time is one which lasts merely for a moment: it is the period in which the right to the rent crystallizes, and it arises at the last moment of time which the tenant has for making his payment, that is to say, on the last moment of the day upon which rent is made payable. The fourth period is the period when the rent is in arrears, and arises immediately after the last moment of the day upon which rent is made payable. This view is supported by *Clun's* case (1612), 10 Co. Rep. 127a, and such a view seems to have been adopted by Buckley, J., in the case of *Re Aspinall*. In *Clun's* case it is stated: "And it is to be known, that in case of payment for rent issuing out of land, they are four times the payment, the first time of payment voluntary and not satisfactory, and yet good to some special purpose. The second voluntary, and in case satisfactory, and in case not. The third legal and satisfactory absolutely, and not coercive. The fourth legal, satisfactory and coercive."

In the circumstances of *Re Aspinall* the judge held that the rents payable on 25th December, the day of the death of the landlord, did not form part of the landlord's estate but became part of the income of the tenant for life with this minor exception, that because the rents were not "due" on the day of the testator's death there could be an apportionment in respect of one day. Accordingly such an apportionment was ordered.

J. H. HAMES.

"THE SOLICITORS' JOURNAL," 15th JUNE, 1861

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THE VALIDITY OF CONDITIONS ON PLANNING PERMISSIONS—II

THE principles laid down in the *Fawcett* case emphasise the importance of laying down the policy of the local planning authority in the written statement which forms part of every development plan, for, if a refusal of permission or a condition on a permission can be related to any policy in that statement, there can be no doubt that it is *intra vires*. Thus it might be desirable to lay down a policy for restriction of access to classified roads, to which service road conditions on planning permissions can be related. Or, where industrial land is to be reserved for the relocation of local non-conforming industry, or industry from the London area only, that should be stated to justify refusal of permission or the imposition of conditions in suitable cases. If a policy is not so stated, however, it may well fall under the "other material considerations" in s. 14 (1) of the Town and Country Planning Act, 1947, but will then be open to the argument that it is not a proper planning consideration.

Unenforceable conditions

Apart from considerations of *ultra vires* and uncertainty, a planning condition may fail because it is unenforceable. Thus, it is not uncommon to find a condition to the effect that no trees on the land concerned shall be cut down, lopped or topped. The remedy for breach of condition is the service of an enforcement notice, which has to specify the steps to be taken for securing compliance with the conditions. But if a tree has been cut down, the notice cannot require it not to be cut down! The Minister has expressed the view (Decision 55, Selected Planning Appeals, Second Series, Vol. I) that the imposition of such a condition is not a proper use of powers under s. 14 of the Act but that a tree preservation order should be made under s. 28. It seems to the writer that a condition designed to preserve a tree screen is, within the *Fawcett* principles, a valid condition provided it can be drafted so as to be enforceable as, e.g., by requiring not that no trees be cut down but that if any tree at any time forming part of the screen should be cut down a tree of the same species and of as nearly as possible the same maturity having regard to current arboricultural practice should be transplanted to replace it and maintained in its place, or that, if any tree is cut down, lopped or topped without the consent of the authority, the permitted development shall be removed or discontinued.

Another condition which is unenforceable as such and which is not unusual requires the erection of the building to which the permission relates to be commenced by a certain date. A variant of this is the condition often met with on an outline planning permission that the permission shall be null and void if the detailed plans are not submitted within a specified period. Although s. 14 (2) of the 1947 Act specifically provides for a limited period permission, that is, a permission which requires the development to be removed or discontinued at the end of a specified period, the Act makes no specific provision for a permission only to be effective if it is implemented within a specific period. Nevertheless, there seems no reason why planning permission should not be granted for development to be started before a certain date but not afterwards. Probably the courts reading the permission as a whole, however the limitation was expressed, would give effect to the intention and regard the development if commenced after the specified date as being carried out without permission.

Section 41 (2) of the Caravan Sites and Control of Development Act, 1960, now expressly declares that, where permission is granted for development consisting of or including building operations subject to a condition that the operations shall be commenced not later than a time specified in the condition, and any operations are commenced after the time so specified, the operations do not constitute development for which the permission was granted. As the subsection is declaratory it is probably retrospective in effect, at any rate where the operations had not been started before the commencement of the Act, 29th August, 1960. The subsection does not apply to development which consists of a material change of use.

Condition derogating from grant of permission

There is another type of condition, quite commonly met with, which seeks to limit or derogate from a permission, namely, where permission is granted for development as applied for and a condition is imposed cutting down or altering the effect of this permission, e.g., where application is made for permission to develop land by building forty houses and permission is granted with a condition imposed that only thirty houses be erected over the whole area, or with a condition excluding part of the land from the permission. In the first case permission should be refused with a statement indicating that an application for thirty houses would be likely to be approved, while in the second case similar action should be taken, or a permission could be granted for part of the land and a refusal for the rest. In one appeal case application was made for planning permission to erect two garages on a particular site between two houses where they would be partly supported by the walls of the houses; permission was granted subject to a condition that the garages should be resited in another place. The Minister, in deciding the appeal, said that the condition was inconsistent with the terms of the permission and, if objection was taken to the siting of the buildings, the proper course was to refuse permission on the application (Decision 67, Selected Planning Appeals, Second Series, Vol. II).

It is probable that if a condition of this kind came before the courts for interpretation they would, reading the permission as a whole, give effect to the intention of the local planning authority where the development intended to be permitted was part of the whole applied for, but where the intention was to permit something different from that applied for, as in the appeal decision quoted, it might well be that the condition would be treated as *ultra vires* or otherwise ineffective.

Conditions affecting another person's land

Another kind of case where permission should be refused, instead of being granted subject to a condition, is where the condition would require something to be done on land not under the control of the applicant. This usually arises in connection with questions of access. Thus a common case where this problem arises is the proposed development of back land by means of an estate road running to a public highway between two houses forming part of the frontage development to the highway. The local planning authority will quite often be anxious to impose a condition requiring vision splays to be laid out at the junction of the estate road with the highway. It will then be found that the splays cross the corners of the front gardens of the adjoining houses, which

are not owned by the applicant. In another case the authority may wish to insist on access being obtained across someone else's land to avoid making a new access to a classified road. In this kind of case the authority should refuse permission until satisfied that the applicant has obtained sufficient control over the other land involved to comply with the proposed condition. It is, however, by no means certain that such a condition would be *ultra vires* if imposed when the applicant did not control the other land, and it would be unwise for him to disregard the condition and carry on with his development; he should appeal against the condition to the Minister.

The opposite question, namely, whether the authority may impose a condition requiring an applicant to give access to other people over his land, has been considered by the Minister on appeal, and the Minister has said that there is no such power (Decision 30 in Bulletin of Selected Planning Appeals No. XIII). This is an important question as, where adjoining land is in several ownerships, it will often be better to develop it as a whole and the proper planning of the area may be seriously affected if one owner involved will not allow another access so that, e.g., the latter can develop on an extension of the first owner's estate road. It seems highly probable that, in the light of the *Fawcett* case, such a condition is not *ultra vires*.

How to dispute the validity of planning conditions

If any condition is imposed on a planning permission granted by a local planning authority, it may be questioned in an

action in the High Court for a declaration that it is invalid long after it was imposed, as in the *Fawcett* case. Where, however, the condition is imposed on a permission granted by the Minister, either on a reference of the application to him in the first instance or on appeal, application must be made within six weeks of the decision to the High Court under s. 31 of the Town and Country Planning Act, 1959, if it is desired to have the decision quashed on the ground that it is *ultra vires*; failing this the Minister's decision cannot be questioned in any legal proceedings. If the Minister's condition can be attacked on other grounds, e.g., that it is void for uncertainty or its construction is in issue, s. 31 would seem not to apply.

Apart from action in the courts, an appeal may be made to the Minister in the usual way against a condition claimed to be invalid, and he will, if satisfied that it is invalid, no doubt discharge it. Alternatively, application can be made to the authority for permission to retain the development, if carried out, without complying with the condition, and on appeal to the Minister, if necessary, there seems no reason why the validity of the condition should not be challenged as part of the appellant's case for the grant of permission.

It remains to say that this article has been concerned only with the legal validity of planning permissions. A condition may well be perfectly valid in law but yet be unreasonable or unjustified in the particular circumstances. The remedy for an unreasonable or unjustifiable but legally valid condition is only an appeal to the Minister.

(Concluded)

R. N. D. H.

NEW HIGHWAY LEGISLATION

THE present Parliament has been considering two separate measures dealing with points of highway law. The first to be introduced, the Highways (Miscellaneous Provisions) Bill, has not yet become law, being held up by the Government's decision, while the Bill was in Committee, to introduce a clause abolishing the defence of "non-feasance," which can at present be pleaded by highway authorities in actions alleging injury arising from a failure to keep a highway in repair. This reform has been "in the wind," as it were, for some time; now the defence is to be abolished, with qualifications, as from the end of a period of three years after the passing of the Bill. This clause will be considered fully in a subsequent article to be published on that Bill, as soon as possible after Royal Assent.

The Private Street Works Act, 1961

The second measure—the Private Street Works Act, 1961—has now received Royal Assent, and comes into operation on 18th June, 1961. It is a brief measure of only three clauses dealing with a minor mistake of drafting and an almost equally insignificant anomaly.

First, s. 1 inserts the words "or occupiers" after the word "owners" in the proviso to s. 189 (1) of the Highways Act, 1959. These two words obviously ought to be where they are now inserted, but we should not have thought this to be a matter of great importance, for in the comparatively few cases where the local authority operate their private street works schemes under the "code of 1875" they would almost always prefer to operate against the owners of premises affected rather than the occupiers. However, if we are still to have two codes, we cannot but agree that the amendment now effected is logically necessary.

The substance

Section 2—the substance of the Act, in so far as it has any substance—provides for the case where a footpath is made up on one side of the street at the expense of the frontagers on that side only, and then the local authority subsequently make up the footpath on the other side of the street, also at the expense of the frontagers. The question that the section affects is, at whose expense should the second footpath be made up—the frontagers on both sides of the street, or only those fronting on the second footpath? Under the 1875 Act (before the 1959 Act was passed), there was authority for suggesting that only the frontagers on the side on which the footway was situated could be charged: *Wakefield Sanitary Authority v. Mander* (1880), 5 C.P.D. 248. This reasoning could not be applied to the Private Street Works Act, 1892 (see *Clacton Local Board v. Young* [1895] 1 Q.B. 395). The Committee on Consolidation of Highway Law, whose report preceded the passing of the Highways Act, 1959, advised against the 1875 Act rule, and consequently, the Act provides (see s. 174 (1), proviso, and s. 189 (1), proviso, as now amended) that the former 1892 Act rule shall apply to both the code of 1892 and the code of 1875.

Where a local authority have operated in the past in accordance with the principle in the *Wakefield* case, the change effected by the 1959 Act has proved to be a source of grievance, according to Mr. F. W. Mulley (M.P. for Sheffield, Park), and this is the reason for the new Act, introduced as a Private Member's Bill. It is therefore provided that where street works have been executed before 1st January, 1960 (the date of commencement of the Highways Act, 1959), in respect of a footway on one side only of a street at the expense only of the frontagers on that side, and it is subsequently proposed to

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make up the footway on the *other* side of the same street (under either the "code of 1892" or the "code of 1875" or a local Act), then the expenses are to be apportioned only between the premises fronting on that footway. It should be noted, however, that the Act is really only a transitional provision, for it will have no effect on streets where there was no footpath on either side on 1st January, 1960.

The recommendations of the Consolidation Committee are thus, in the long term, vindicated, and the number of cases

where the new Act will apply is not likely to be great. Still, injustice is injustice, however small may be the number of persons affected, and it is interesting to see Parliament legislating on such a matter. The number of drafting errors and injustices in our statute book that could receive the attention of a pertinacious and alert Private Member such as Mr. Mulley are indeed legion; let us hope that he secures more successes in the ballots in the House!

J. F. GARNER.

Property Practice

THE PREMISES OF A DEED—II

CONSIDERATION (*continued*)

APART from the three equitable defects, considered in the preceding part of this article (at p. 503), which may be present if consideration for a deed is absent, a voluntary conveyance may give rise to any one or more of the following adverse conveyancing consequences.

(1) Root of title

A voluntary conveyance less than thirty years old (see s. 44 (1) of the Law of Property Act, 1925) will only be a good root of title if its nature is fully stated in the contract for sale: *Re Marsh and Earl Granville* (1882), 24 Ch.D. 11 (C.A.). Otherwise, where a vendor stipulates that title for less than the statutory period shall be accepted, a purchaser is entitled to assume that the document commencing the title was one where the title would have been investigated. The objection is that this is unlikely to be so with a voluntary conveyance: "You do not look a gift horse in the mouth" (per Fry, J., at first instance, in *Re Marsh and Earl Granville*, *supra*, at p. 15).

(2) Covenants

The covenants for title implied by s. 76 (1) (A) and (B) of the Law of Property Act, 1925, on the part of a person who conveys and is expressed to convey as beneficial owner are only implied in a conveyance for valuable consideration. Also the covenants implied in conveyances subject to rents by s. 77 of the Law of Property Act, 1925, are only implied where there is valuable consideration, unless there is an express reference to the section (s. 77 (4)).

(3) "Purchaser"

The 1925 property legislation contains a vast number of provisions relating to and generally protecting a "purchaser." The definitions of "purchaser" in the Law of Property Act, 1925 (s. 205 (1) (xxi)), the Administration of Estates Act, 1925 (s. 55 (1) (xviii)), and the Land Charges Act, 1925 (s. 20 (8)), all have "valuable consideration" as an essential element. In the Settled Land Act, 1925 (s. 117 (1) (xxi)), "value" rather than "valuable consideration" is made a part of the definition of "purchaser," but without, it is thought, any difference in meaning. The Trustee Act, 1925, contains no definition of "purchaser," although in s. 17 thereof, by which the Act affords protection to purchasers and mortgagees dealing with trustees, a payment or advance of money is a requisite (compare s. 13 of the same Act, where the word "purchaser" is used without any such requisite).

It is to be noted that s. 17 of the Trustee Act, 1925, refers to "money." Only in the definitions of "purchaser" in the Law of Property Act, 1925 (s. 205 (1) (xxi)), and the Administration of Estates Act, 1925 (s. 55 (1) (xviii)), is it stated that "'valuable consideration' includes marriage but does not include a nominal consideration in money." It will be appreciated that "marriage" means future marriage: *A.-G. v. Jacobs-Smith* [1895] 2 Q.B. 341. Also, it is well known that a reference to "money or money's worth" (as in Pt. I of the Law of Property Act, 1925, and s. 157 (2) of the same Act, and s. 13 (2) of the Land Charges Act, 1925) excludes marriage, though it apparently includes an existing debt: *Thorndike v. Hunt* (1859), 3 De G. & J. 563.

Aside altogether from statutory provisions, equity's notorious darling, the bona fide purchaser *for value* without notice, must be mentioned. If such a person obtains a legal estate it is clear beyond doubt that he has priority over all comers: *Pilcher v. Rawlins* (1872), L.R. 7 Ch. 259; not so a volunteer: *Re Nisbet and Pott's Contract* [1906] 1 Ch. 386.

(4) Vital

Consideration is vital to one or two transactions which will be ineffective if it is lacking. Thus a sale by a tenant for life under a strict settlement of land must normally be "made for the best consideration in money that can reasonably be obtained": s. 39 (1) of the Settled Land Act, 1925. It may be noted that, as a tenant for life is a trustee (s. 107 (1) of the Settled Land Act, 1925), he cannot solve his problem of obtaining the stipulated best price by selling at a valuation: *Re Earl of Wilton's Settled Estates* [1907] 1 Ch. 50 (except as to timber and fixtures under s. 49 (2) of the Settled Land Act, 1925). However, strangely contradictory to s. 39 (1), a purchaser from such a tenant for life has no similar problem since he is to be "conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life": s. 110 (1) of the Settled Land Act, 1925.

(5) Voidable

There are four very well-known statutory provisions which, speaking broadly, may operate to upset a voluntary conveyance or settlement. These provisions are: s. 172 of the Law of Property Act, 1925 ("Voluntary conveyances to defraud creditors voidable"); s. 173 of the same Act ("Voluntary disposition of land how far voidable as against

purchasers"); s. 42 of the Bankruptcy Act, 1914 ("Avoidance of certain settlements"); and s. 2 of the Matrimonial Causes (Property and Maintenance) Act, 1958 ("Avoidance of disposition made to defeat wife's claim for financial relief"). A full discussion of these provisions is outside the scope of this article. It is sufficient first to indicate their existence and then to point out that a document which falls within any of the provisions can none the less be a good link in the title to land. Thus avoidance of a conveyance within s. 172 of the Law of Property Act, 1925, does not affect the rights of a bona fide purchaser for value who, without notice of any intent to defraud, acquires any interest, legal or equitable, in the property conveyed (s. 172 (3)). Such a purchaser is protected rather than affected adversely by s. 173 of the Law of Property Act, 1925, and he is similarly protected by s. 2 (3) of the Matrimonial Causes (Property and Maintenance) Act, 1958. Although the word "void" is used in s. 42 of the Bankruptcy Act, 1914, it has been held to mean "voidable" so that a bona fide purchaser for value before receiving notice of the commencement of bankruptcy gets a good title:

Re Carter and Kenderdine's Contract [1897] 1 Ch. 776; *Re Hart; ex parte Green* [1912] 3 K.B. 6.

Only two other points are worth mentioning here. The first is the proper construction of s. 172 (3) of the Law of Property Act, 1925, which excludes from the operation of that section conveyances "... for valuable consideration and in good faith or upon good consideration and in good faith to," etc. The latter half of this excerpt would appear to prevent even voluntary conveyances being set aside (assuming the other conditions of exclusion are present), thus altering the position under 13 Eliz. 1, c. 5, 1571, which was replaced by s. 172. But Harman, J., in *Re Eichholz; Eichholz's Trustees v. Eichholz* [1959] Ch. 708, apparently without argument, treated "good consideration" in the subsection as synonymous with "valuable consideration." Whether the learned judge can be right in this is very much doubted. The second point worth mentioning is that in s. 2 of the Matrimonial Causes (Property and Maintenance) Act, 1958, "valuable consideration" expressly does not include marriage (s. 2 (8)).

(To be continued)

P. P.

Landlord and Tenant Notebook

ASSIGNEE OF FARM TENANCY

THE tenant of an agricultural holding who receives a notice to quit which states that it is given "by reason of" the death, within three months before it is given, of the tenant with whom the contract of tenancy was made, and which thus purports to satisfy the provision in s. 24 (2) (g) of the Agricultural Holdings Act, 1948 (excluding the right to serve a counter-notice under subs. (1)), may, especially if he be familiar with the preceding six paragraphs of subs. (2), feel disposed to murmur "*non sequitur*." He is not accused of bad husbandry or bankruptcy; the landlord does not want to develop the land, etc.; so why may he not challenge the notice to quit?

To question the reason on these lines would, however, merely be to cavil at the Legislature. The landlord is in a better position even than that of Dr. Johnson, who when someone complained that he could not understand his reasoning replied: "Sir, I have given you an argument; I am not obliged to give you an understanding." But, in so far as appreciation of reasons does contribute towards the interpretation of statutes, it can be said that, having conferred on tenant farmers considerable rights to compensation and much security of tenure, and imposed many corresponding obligations on their landlords, the Legislature has seen fit to ensure that the landlord should have some choice in the matter of who shall be his tenant. It is, no doubt, for this reason that the qualification of covenants against assignment, etc., without consent—a proviso that such consent is not to be unreasonably withheld—inserted by the Landlord and Tenant Act, 1927, s. 19 (1), is not imported into leases of agricultural holdings (*ibid.*, subs. (4)).

Whose death?

Assistance of that kind is not, of course, necessary or admissible when the words of an enactment are plain, and in deciding *Clarke v. Hall* [1961] 2 W.L.R. 836; p. 366, *ante*, Widgery, J., held that the words "the tenant with whom the contract of tenancy was made" were not ambiguous.

The facts of the case, an action for possession, were, it is true, a little out of the ordinary. In 1948 the plaintiff

and the defendant were landlord and tenant of certain land. The plaintiff wanted part of that land and the defendant was willing to give up that part, taking a new tenancy of the rest. At his request the new tenancy, a Ladyday one, was granted to his mother. It did not restrict alienation but when in 1950 the defendant said he would like the tenancy "to be in his name" the plaintiff (who might have known better) said a licence to assign would be necessary. An assignment from mother to son was then executed (consideration £5) and so was a licence under seal—in which the defendant covenanted not to assign, charge, underlet, etc., the premises. The forfeiture clause in the tenancy agreement was not made applicable to breach of this covenant.

The defendant's mother died in February, 1959, and in March the plaintiff served a notice to quit, expiring 25th March, 1960, specifying the death of the mother as reason. The defendant's solicitors (the W.L.R. report says "plaintiff's," clearly a mistake) served a counter-notice. The writ was issued in August, 1960.

One of the defendant's points was that para. (g) applied only when the death was that of a tenant who died a tenant. It was based on the definition of "tenant" in s. 94 (1): "the holder of land under a contract of tenancy," the argument being that para. (g) of s. 24 (2) should be read as: "The holder of land, being the holder of land with whom the contract of tenancy was made, had died within three months before the giving of the notice to quit." Rejecting this argument, Widgery, J., said it was clear that the words meant what they said: a landlord may have the opportunity of serving a notice if the individual who was the tenant with whom the contract of tenancy was made had died within the preceding three months.

It is noticeable that the judgment, as does the paragraph, uses the word "had died within three months." Grammatically, one might expect "has": the phrase "The foregoing subsection [subs. (1)] shall not apply where the tenant with whom the contract of tenancy was made had died

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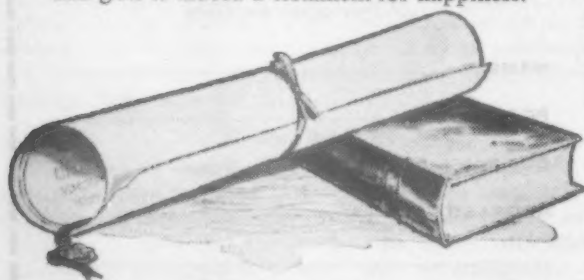
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within three months before the date of the giving of the notice to quit . . ." is somewhat inelegant; but the use or misuse of the past perfect instead of the perfect tense may go to support the view that the deceased is not meant to be a person who held the tenancy when he died.

Novation ?

What may be considered a stronger point was the contention that an entirely new tenancy had been created when the unnecessary licence was granted in 1950. The effect, it was said, was that the defendant *was* the tenant with whom the contract of tenancy (which it was sought to determine) was made.

In the face of the £5 assignment, Widgery, J., declined to accede to this argument. That assignment by its very terms stated that what was being passed to the defendant was the existing estate of his mother upon the terms and conditions which she had contracted to observe in the original tenancy agreement. It and the licence were, the learned judge reasoned, entirely consistent with the defendant becoming a tenant and being regulated by the terms of the old tenancy. The additional covenant against assigning or under-letting was to be regarded as a purely collateral personal bargain between the defendant and the plaintiff.

One would have liked to find this point more closely examined. In *Wilson v. Lloyd* (1873), L.R. 16 Eq. 60,

Bacon, V.-C., after expressing some unexplained reluctance as to the use of the term "novation," took his law from the Institutes. Two things must concur: there must be the *animus novandi*, and the substitution of some other thing for that original obligation out of which the debt arose. The *animus novandi* was a thing which was not to be proved as a fact, but was an inference from the facts which were proved. I do not suggest that similar reasoning was not applied in *Clarke v. Hall*, Widgery, J.'s decision being essentially a finding of fact after weighing the evidence. The assignment of the term was, of course, one fact: it presumably outweighed the facts that the mother had been virtually a nominee when the holding was let to her for that term, and that the "purely collateral personal bargain" appears to have been made either for no consideration, or in consideration of the grant of a tenancy otherwise on the terms of the old one held by the defendant's mother.

Further discussion arose out of the facts that the defendant had notified the plaintiff of claims for pasture, unexhausted manurial value of fertilisers, etc., in February, 1960, and had apparently removed some stock on 28th March, 1960, the plaintiff contending that the defendant had by his conduct estopped himself from denying the validity of the notice to quit which expired on 25th March. Widgery, J., decided that he had not. The subject merits a separate article.

R. B.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Neglecting to Maintain

Sir,—Your leading article of 2nd June, "Neglecting to Maintain" (p. 473), refers to the case of *Naylor v. Naylor* [1961] 2 W.L.R. 751. I write without the full report in front of me but I would probably forget if I waited for that.

This sort of case would appear to be covered by s. 4 of the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, which, if I read it aright, means that, notwithstanding that the petitioner (in this case the wife) has no ground for complaint, the court may still make an order under s. 2 (1) (h), amongst others. It would also appear that the court could also make an order against the petitioner to the like effect.

It would appear to be the fact that a case may well be got on its feet and then, once that has been done, the court has its discretion to make numerous kinds of orders against the parents—or rather, in the interests of the children.

Dartford,
Kent.

R. PARSONS.

[We agree. By s. 4 (1) of the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, where a court has begun to hear a complaint for a matrimonial order under s. 1 or certain variation or revocation proceedings, then, whether or not it makes the order sought, it may make an order for custody, committal to care, supervision, access and/or maintenance in respect of any child of the family. In a case brought today similar to *Naylor v. Naylor*, a wife could take advantage, at the court's discretion, of s. 4, just as, both before and after the new Act, a wife in fault could still obtain maintenance for the children of the marriage under the Guardianship of Infants Acts. Our paragraph was, however, concerned solely with the question whether desertion constituted a defence to an allegation of wilful

neglect, and the new Act does not affect that issue. We are much obliged to our learned correspondent for his amplification of other issues involved.—Ed.]

Company's Power to Hold Land

Sir,—Mr. Pennington's letter (p. 489) commenting on my article raises several interesting points. With respect, however, the reasons advanced by him are not in my opinion conclusive either way.

In particular the reference to s. 408 of the Companies Act, 1948, and foreign companies' powers does not provide a satisfactory answer. There is surely nothing that is contrary to principle if a municipal law of one country places restrictions on the operation, extra-territorially, of another country's laws. For example in *Great West Saddlery Co., Ltd. v. R.* [1921] 2 A.C. 91, the Canadian Companies Act enabling a Dominion company to hold land for the purposes of its undertaking was held to be subject to a particular provincial law restricting the powers of companies in that province.

If, therefore, I am right that s. 14 conferred a mere power, its exercise being subject to the *ultra vires* rule, then it is immaterial whether it is an English company or a foreign company. If the result is that a foreign company with no foreign *ultra vires* rule becomes subject to such a rule when it seeks to exercise its powers here, this is not an anomaly, but simply another illustration of a general principle of conflict of laws concerning the extra-territorial validity of any country's laws.

It has been said that the extent of a company's powers is determined by the country of incorporation, but that its acts must be valid according to the law of the country where they are done (see Halsbury, vol. 7, p. 12).

London, W.8.

T. WALTON.

Wills and Bequests

Mr. HERBERT EDGAR COOKE, solicitor of Bournemouth, who died on 11th February, 1961, left £70,224 net.

Mr. CHARLES LEWIS GREGORY, solicitor, of Bickley, Kent, left £184,261 net.

HERE AND THERE

MATRIMONIAL MUDDLE

THE matrimonial mess into which England (in common with many other countries) has managed to get herself can be measured in a rough-and-ready sort of a way by the fact that when the Royal Courts of Justice were opened in 1883 two judges were deemed quite sufficient to cope with the combined complexities of probate, divorce and admiralty work. If the composite Division which deals with these diversities now musters ten judges (or is it eleven? one loses count), it is not because wrecked ships are littering our shores in unprecedented numbers or families are fighting more furiously than before over the wills of rich uncles. It is the muddle of modern marriage that all these additional judges are deputed to disentangle and, though the population has risen in the last eighty years, it has not multiplied by five. The labours of all these judges have not succeeded in leading the law of matrimonial relationships into a landscape of limpid lucidity, where an Arcadian innocence is renewed. On the contrary, the stresses which pull marriages apart seem to become, not only more and more complex but also more and more curious. Those who wish to remedy this situation mostly shy away from any decisive declaration that marriage is eternal and content themselves with nibbling at the two procedural ends of the problem, rather than precipitately plunging into the heart of the matter. It is often suggested on the one hand that both marriage and divorce should be made more difficult. Whether the effect of devising a bottleneck at either end would be automatically to convert the married state into a lagoon of lasting love is at present a matter for experiment rather than for dogmatism, save in so far as one can collect chance clues from human experience elsewhere.

SURE START

Now, it happens that in the same column of a daily newspaper there were recently recorded two pieces of information from the Pacific which bear upon the problem of marriage at start as well as finish, at first thought and last resort. The fact that the first deals with a device which is so up to date as to be almost ahead of its time, and the second presents a procedure of primitive simplicity which is positively startling, only adds to the interest of the combined effect. The first is an invention by the ingenious Japanese for testing the scientific propriety of a proposal of marriage, with a pocket-sized "love meter" designed to reveal the intensity of the lady's sentiments. Ever since the guns of the nineteenth-century American Navy so unfortunately convinced the Japanese of the utility of modern inventions, Japan has displayed a most

disconcerting readiness to adopt and adapt them, but, even amid the decline of the decorative kimono, it is startling to be given to understand that the progressive suitor as a preliminary to a proposal of marriage finds it practicable to take the girl's hand meaningfully in his and fix to her forefinger and her third finger two leads attached to two plastic and metal electrodes operating a tiny electric battery. Then when the momentous question comes a tiny needle will indicate on the face of a dial whether the lady's "Yes" means simply and sincerely "Yes" or whether with feminine obliquity of expression her heart is really saying only "Maybe" or perhaps even "No." For those who want to take some of the headlong impulsiveness out of marriage the idea is worth considering.

THE ISLAND

THE device for discouraging divorce comes by contrast from a place called Ganka, a primitive fishing village of Okinawa, on the shores of the China Sea. A couple of miles offshore there is a coral outcrop, shelterless, treeless and very cold at night. It is called Otofushi, which means the Divorce Rock. Now when a marriage in Ganka starts to show ominous signs of breaking up the sensible inhabitants of Ganka waste no time in trying to discover which is the "guilty" and which is the "innocent" party, a futile endeavour because in the mysteries of marriage no one can ever tell who is to blame. Instead the now unhappy couple are transported straight to the rock and live there with nothing but one blanket. There they remain till next day. It usually only takes one night to bring about a happy ending in which feuds are forgotten in the sharing of the one blanket. Some divorce law reformers have suggested that English divorce procedure should be adapted to incorporate the "*tentative de conciliation*" of the French, whereby the court must attempt a reconciliation of the parties before pronouncing a divorce. While we are about it, we might simultaneously adopt the Ganka method. We have plenty of barren uninhabited little islands scattered up and down our western coasts. There would be a more intelligible bond between divorce and admiralty if the court had jurisdiction to ship off pairs of petitioners and respondents for sojourns of varying duration on some of the more remote. In Ganka, they say, there has not been a divorce for fifty years. One would not have to expect so spectacular a drop in decrees in our own case, but it would certainly discourage the frivolous divorce.

RICHARD ROE.

SOLICITOR APOLOGISES

In *Richards v. Sunningdale Nurseries* on 9th June, Mr. Justice Elwes accepted the apologies of the plaintiff's solicitor for his failure to inform the clerk of the lists in writing that the action had been settled, and granted leave to file a legal aid certificate out of time.

WEST MIDLANDS

LOCAL GOVERNMENT COMMISSION'S FINAL REPORTS

Recommendations for five all-purpose authorities of county borough status for the Black Country, boundary changes for Birmingham, Coventry, Stoke-on-Trent and Staffordshire and changes in the status of Burton-upon-Trent and Worcester have

been submitted to the Minister of Housing and Local Government and were published on 5th June. The Minister is now inviting comments on these proposals. If there are objections public local inquiries will follow. We understand that at this stage the Minister has formed no view on what changes, if any, he will ultimately propose to Parliament.

INVESTIGATION OF COMPANY

The Board of Trade, in pursuance of the powers conferred on them by s. 165 (b) of the Companies Act, 1948, have appointed Mr. Michael Mortimer Wheeler, Q.C., and Mr. David Douglas Rae Smith, M.C., chartered accountant, as inspectors to investigate the affairs of Freehold Land Finance Co., Ltd.

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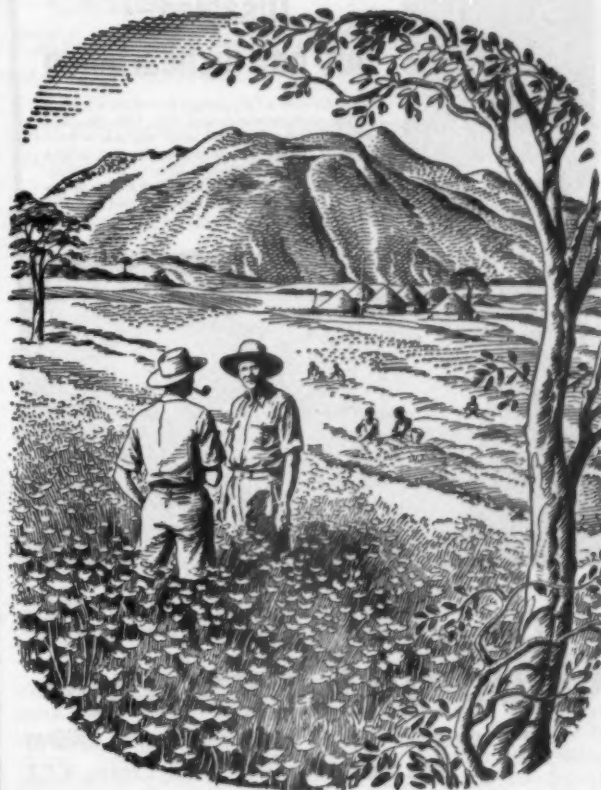
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NOTES OF CASES

*These notes are published by arrangement with the Council of Law Reporting. Except in respect of those marked *, full reports of the judgments, revised by the judges, will shortly appear in the Weekly Law Reports. A list of cases reported in today's issue of "W.L.R." is set out at the end of these notes.*

Case Editor: J. D. PENNINGTON, Esq., Barrister-at-Law

Judicial Committee of the Privy Council

PUBLICATIONS BY COSMETIC SURGEON: ATTENTION DRAWN TO PROFESSIONAL SKILL: WHETHER ADVERTISING

Gardiner v. General Medical Council

Lord Tucker, Lord Denning and Lord Morris of Borth-y-Gest
31st May, 1961

Appeal from General Medical Council Disciplinary Committee.

A consultant ear, nose and throat surgeon, who had for some years practised "cosmetic surgery," wrote and published a book and sanctioned and acquiesced in the adaptation for serialisation of the book in a women's magazine with a mass circulation. The book, autobiographical in form, included accounts of successful operations performed by the author; it proclaimed that there need be no prejudice against nor fear of cosmetic surgery and that the author was one who by his training, skill and experience had brought relief and happiness to his patients. He was charged before the Disciplinary Committee of the General Medical Council and found guilty of infamous conduct in a professional respect by writing and causing to be published the book and sanctioning or acquiescing in the publication of articles, all of which were alleged to include matter directing attention to his professional skill, knowledge, services and qualifications, and of thereby advertising for the purpose of obtaining patients or promoting his own professional advantage; and it was ordered that his name be erased from the register. The surgeon appealed.

LORD MORRIS OF BORTH-Y-GEST, giving the judgment, said that the particulars of the charges had made it necessary for the council and for their lordships to consider the nature of the written material, the mode of publication adopted, and all the circumstances relating to the purposes and reasons inspiring the publication. Professional men might be amply justified in publishing books and articles in their own names; but by doing so they might inevitably and indeed justifiably attract notice which might redound to their professional and pecuniary advantage. Within the profession the line between the unobjectionable and objectionable publication should present no difficulties of recognition for any reasonable practitioner, even though the accepted ethical standards might not be formulated precisely or in any written code. The appellant had said that he had more than one purpose in writing, one being to dispel the "veil of secrecy" which had shrouded cosmetic surgery. But their lordships considered that the Disciplinary Committee, having heard all the evidence and the facts, were entitled to decide that in carrying out those purposes the appellant had had the essential purpose of presenting himself and his subject to the public and proclaiming himself as one whose services the public might be well advised to seek. The committee were also entitled to have regard to the content and form of the written material and the selected media for its publication, and to consider whether a desire to give information about and direct attention to the subject could have been achieved without directing attention to the personal and unique performances and abilities of the writer. Having been referred to the evidence and the serialisation, and having considered the book, their lordships concluded that there had been ample material warranting the decision of the committee. Appeal dismissed.

APPEARANCES: *The appellant in person (Henry Solomon & Co.); Peter Boydell and Hugh Carlisle (Waterhouse & Co.).*

[Reported by Miss M. M. HILL, Barrister-at-Law]

PRIVATE COMPANY: RESTRICTION OF SALE OF SHARES TO MEMBERS: POSITION AND DUTY OF EXECUTOR MEMBER

Roberts and Another v. Letter T Estates, Ltd., and Others

Lord Tucker, Lord Denning and Lord Morris of Borth-y-Gest
8th June, 1961

Appeal from the Federal Supreme Court of the West Indies.

A testatrix, Sophia Musterd, who died on 19th October, 1956, holding shares in the respondent company, Letter T Estates, Ltd., a private company incorporated under the laws of British Guiana, by her will gave to each of the two appellants, her maid and her chauffeur, a specific legacy of 121 shares in the company. The executor of her will, the second respondent, was registered as a member as nominee of the testatrix in respect of ten of those shares. Article 25 of the company's articles of association provided that the executors or other legal representatives of a deceased member should be the only persons recognised by the company as having any title to the shares of such member, and by art. 15 "Any person (not a member or the son, daughter [or specified close relative] of a member) becoming entitled to shares in consequence of the death of any member, shall, within three months . . . offer the shares to members . . . at the fair value. On a summons taken out by the executor for directions whether he should transfer the 242 shares to the two legatees or to three member shareholders (the third, fourth and fifth respondents) who wished to purchase them, the trial judge ordered the executor to execute transfers of the 242 shares to the two legatees. On appeal by the company from that order the Federal Supreme Court of the West Indies, by a majority, on 4th July, 1958, reversed the decision of the trial judge and ordered the two legatees to comply with art. 15 and to make the offer required by it. The two legatees now appealed.

LORD DENNING, giving the judgment, said that the words in art. 15, "any person . . . becoming entitled to shares in consequence of the death of any member," designated not the two legatees (who only became entitled to the beneficial interest), but the executor, who became entitled to the legal interest, and must be recognised by the company as being entitled on behalf of the estate even though his name had not been entered on the register in respect of the shares of the testatrix; see *Llewellyn v. Kasintoe Rubber Estates, Ltd.* [1914] 2 Ch. 670. Next, the words in parentheses in art. 15, "any person (not a member, etc.)," must mean "not himself being a member, etc.," and since the executor fell within the words "any person" and was himself a registered member (in respect of the ten shares as nominee), he was within the exception contained in the parentheses and was not bound under art. 15 to offer the 242 shares to members. The fact that he was only nominee of the ten shares did not affect the matter. Article 15 was accordingly inapplicable. The executor should give notice to the company under art. 9 that he desired to transfer the shares and then make the company (under that article) "his agent for the sale of the shares to any member or to any person selected by the directors . . . at the fair value." He was not bound to transfer the shares to the appellant legatees or to the three respondent members, and he could choose the time he thought best to obtain the fair value and was not bound by the three months in art. 15. Appeal allowed.

APPEARANCES: *E. F. N. Gratiaen, Q.C.* (Ceylon, and *Neil Ellis (Garber, Vowles & Co.)*; *Peter Curry (Cartwright, Cunningham)*; *P. S. A. Rosedale (Wray, Smith & Co.)*; *Ralph Instone (Wray, Smith & Co.)*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

BUILDING REGULATIONS: GUTTER UNDER CONSTRUCTION: WHETHER A SCAFFOLD, GANGWAY OR WORKING PLATFORM

Curran v. William Neill & Son (St. Helens), Ltd.

Holroyd Pearce, Willmer and Pearson, L.JJ.

6th June, 1961

Appeal from Arthian Davies, J.

A steel erector was injured by falling from a gutter of a factory in course of construction, when a length of gutter which had already been laid gave way by reason of a defective hook bolt supplied by an independent contractor. He brought an action against his employers, alleging negligence and breaches of regs. 5, 24 (1), and 97 of the Building (Safety, Health and Welfare) Regulations, 1948. The trial judge dismissed his claim on both grounds. On appeal, the plaintiff sought leave to amend his statement of claim to allege breaches of regs. 7, 8 and 12 (2), contending that the working platform from which he had fallen was also a "gangway" and constituted a "scaffold" and that the defect in the bolt was a defect of construction, quality, condition and material, contrary to those three regulations.

HOLROYD PEARCE, L.J., said that the argument on the appeal had proceeded on the basis that the gutter on which the plaintiff worked was itself a scaffold within the meaning of the regulations. Regulations 7 and 8 applied only to scaffolds; but reg. 12 (2) applied also to "working platforms, gangways, or runs." All three regulations imposed an absolute obligation, and as the failure of the hook bolt showed that it was not suitable there would be a breach of duty if any of them applied to the gutter in this case. The gutter was not a scaffold in the ordinary meaning of the word; but that meaning was extended by reg. 3 to include "any working platform, gangway, run," etc. His lordship construed that as meaning that, though the definition of "scaffold" in general concerned itself with temporary structures, it deliberately included something else, namely, working platforms, gangways, etc., whether temporary or permanent, so that the permanence of this gutter did not disqualify it from being a working platform or gangway. But to succeed, the plaintiff must show that the gutter was a "working platform" or "gangway" within the normal sense of the words. Though the gutter was being used by the workmen to pass over as they extended it, it was not a working platform. Nor was it a gangway, but was simply a rainwater gutter which was part of a building. Therefore, even if the plaintiff were allowed to amend he could not succeed. An amendment would have had a strong claim on their lordships' discretion if it could be shown that the plaintiff was entitled to succeed under regulations on which he had omitted to rely at the trial; but here it would serve no purpose and should be refused. The appeal should be dismissed.

WILLMER, L.J., said that reg. 3 did not extend the meaning of "scaffold" to anything other than temporary structures, and as this gutter was part of a permanent structure it could not be a "scaffold." Since reg. 12 (2) applied not only to scaffolds, but also to working platforms, gangways or runs, there might under it be a place which was part of the permanent structure of a building, such that if this gutter could properly be held to be a working platform or gangway within reg. 12 (2)

the defendants were in breach of their obligations. But that question had to be decided as a matter of common sense, and in his lordship's view it was a gutter and nothing but a gutter, and it was impossible to say that it amounted to a gangway so as to be caught by reg. 12 (2).

PEARSON, L.J., delivered a judgment concurring with Holroyd Pearce, L.J. Appeal dismissed.

APPEARANCES: *F. W. Beney, Q.C.*, and *Philip Curtis (W. H. Thompson)*; *R. H. Forrest, Q.C.*, and *C. M. Clothier (Laces & Co., Liverpool)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

NEGLIGENCE: UNSAFE DIVING: WHETHER DIVER TRESPASSER

**Periscinotti v. Brighton West Pier, Ltd.*

Ormerod, Upjohn and Davies, L.JJ. 6th June, 1961

Appeal from Hilbery, J.

At about 6.30 p.m. on 30th July, 1957, the plaintiff dived 32 feet from a diving board adjacent to the sun deck on Brighton West pier into 6 feet of sea water. The water was too shallow for diving and, consequently, the plaintiff struck his head on the seabed and sustained serious injuries. The plaintiff was very proficient in the art of diving, and the dive was properly and efficiently executed. He had gone on to the sun deck, having passed a flight of stairs leading to the bathing station on the pier. At the top of the stairs there was a notice indicating access to speedboat and swimming facilities, but he did not see the notice. A chain had been put across the stairs because the bathing station had been closed at 5.30 p.m. On the sun deck there were two other notices indicating the existence of the bathing station below. There were no changing facilities on the sun deck, and the plaintiff changed into a swimming costume in a quiet corner. Around the sun deck there was a rail fence, and at the point where the diving board was, a further rail. There was no break in the rail fence at the point where the sun deck led on to the diving board. The plaintiff claimed damages against the proprietors and managers of the pier. The judge held that there was no warning of the danger of diving in shallow water, but that as the plaintiff was a trespasser in the use of the diving board no duty was owed to the plaintiff and he dismissed the claim. The plaintiff appealed.

ORMEROD, L.J., said that the plaintiff's case was that he should have been warned of the danger arising from the insufficiency of water for diving. It was accepted that the duty on an occupier was limited to those places on his premises to which a reasonable person might be expected to go, and the question was whether the diving board was within the area of invitation. If it was, the plaintiff succeeded; if not, the plaintiff was a trespasser and his claim failed. The judge had relied on three factors for his finding that the plaintiff was a trespasser. These were first that ample notice was given of the bathing station, secondly, the lack of changing facilities on the sun deck, and, thirdly, the existence of the rail fence between the sun deck and the diving board. These factors should have indicated to the plaintiff that in climbing over the rail on to the diving board he was not making an authorised use of the diving board. It was impossible to disturb the judge's finding, and the appeal would be dismissed.

UPJOHN and DAVIES, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *N. R. Fox-Andrews, Q.C.*, and *Granville Wingate (Pyke, Middleton, Denniss & Brown, for Parrot & Coales, Aylesbury)*; *Patrick O'Connor, Q.C.*, and *Oliver Popplewell (Clifford Turner & Co.)*.

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law]

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**ESTOPPEL PER REM JUDICATAM: JUDGMENT
GIVEN AFTER ISSUE OF WRIT****Morrison Rose & Partners v. Hillman**

Holroyd Pearce, Willmer and Pearson, L.J.J. 7th June, 1961

Appeal from Sir Brett Cloutman, Q.C., Official Referee.

The defendant, an estate developer, orally agreed with the plaintiffs, a firm of architects, that they should do work for him on various building projects on certain special terms. Disputes arose as to payment for abortive architectural work done in respect of anticipated land development which never in fact developed. Unless payment for such work was excluded by special terms in the oral agreement, that agreement entitled the architects to the R.I.B.A. scale of fees for work abandoned. The architects brought an action for recovery of fees, and after a four-week hearing, during which full evidence was given as to the terms of the oral agreement, the Official Referee gave judgment for the architects. Before that judgment had been given the architects had issued a writ in the present action, and after judgment had been given in their favour they amended their reply to the defence in this action to raise an estoppel on the ground that the issue as to their right under the agreement to scale fees for work abandoned was *res judicata*. It was conceded before the Official Referee in the present action that there was no fresh evidence available. The Official Referee decided that the defendant was estopped *per rem judicatum* from adducing evidence as to the terms of the oral agreement, and gave judgment for the architects for £5,044. The defendant appealed.

HOLROYD PEARCE, L.J., said that the defendant contended that no estoppel could be raised by the judgment in the first case since it was given after the issue of the writ in the present case, and he claimed that that was a rule laid down in *The Delta* (1876), 1 P.D. 393. He also relied on R.S.C., Ord. 24, which, he claimed, supported his proposition that a plaintiff could not plead an estoppel after action brought. His lordship could not accept those arguments. The objects of estoppel *per rem judicatum* were succinctly expressed by Lord Blackburn in *Lockyer v. Ferryman* (1877), 2 App. Cas. 519, at p. 530—the one, public policy, that there should be an end of litigation, and the other, hardship on the individual, that he should be vexed twice for the same cause. The defendant had not put forward any principle on which to exclude judgments given after writ issued from the general principles put forward by Lord Blackburn. The plaintiffs here were entitled to plead this estoppel in their reply by amendment. There was no ground for distinguishing *res judicatae* that followed the issue of a writ from those which preceded it. The appeal should be dismissed.

WILLMER and PEARSON, L.J.J., concurred. Appeal dismissed.

APPEARANCES: E. S. Fay, Q.C., and A. C. Bulger (Joelson & Co.); Leonard Caplan, Q.C., and Peter Slot (Hewitt, Woollacott & Chown).

[Reported by Miss M. M. Hill, Barrister-at-Law]

**SUBMISSION OF "NO CASE": EVIDENCE BY
DEFENDANTS AFTER REJECTION OF
SUBMISSION: WHETHER APPELLATE COURT
ENTITLED TO LOOK AT ALL THE EVIDENCE****Payne v. Harrison and Another**

Holroyd Pearce, Willmer and Pearson, L.J.J.

9th June, 1961

Appeal from Havers, J.

In an action by the widow of a deceased man killed in a road collision, the defendants submitted at the close of her case that there was no evidence to go to the jury. The trial judge rejected that submission, and the defendants then called

evidence, as a result of which the jury awarded damages to the plaintiff and judgment was entered accordingly. The defendants appealed on the ground that the judge had erred in law in ruling that there was a case to go to the jury, and contended that the Court of Appeal should consider only the evidence up to the point at which the judge made his ruling, and should dismiss the plaintiff's claim on the ground that it did not establish negligence.

HOLROYD PEARCE, L.J., said that when the paucity of a plaintiff's evidence made it hard to prove a defendant's liability, the defendant had the advantage of being able to ask the judge to rule that there was no case and thus avoid the necessity of revealing by his own evidence that he was in truth liable. Then, if the judge ruled otherwise, the defendant could maintain his advantageous position by declining to give evidence and could go to the Court of Appeal. If, however, he deliberately abandoned that advantage and called evidence, was it fair that he should be entitled to revert to the position which he had voluntarily abandoned? There was no authority directly covering this point. For the defendants it had been argued that in criminal cases the Court of Criminal Appeal had from 1908 onwards taken the view that when the prosecution's evidence was insufficient but the defendant had given evidence the court should or could look at the defendant's evidence as well, but that in *R. v. Abbott* [1955] 2 Q.B. 497, there had been a different approach. But in criminal appeals the defendant had an absolute right, subject to the proviso in s. 4 of the Criminal Appeal Act, 1907, to have his appeal allowed if there was a wrong decision of any question of law. Moreover, the criminal courts might be prepared to extend to a defendant a latitude at the expense of the prosecution which the civil courts should not extend to a defendant at the expense of the plaintiff. Even if in the present case the judge did rule incorrectly, events had moved on since the defendants had made their election and called evidence. Truth had superseded hypothesis. It had been shown by evidence that the defendants were negligent and it would be a denial of justice now to deprive the plaintiff of the judgment to which she had thus become entitled. Thus the question whether the judge was right in his ruling did not arise; but if it were relevant his lordship would hold on the facts that there had been here just sufficient evidence on the plaintiff's case to justify the judge leaving it to the jury.

WILLMER and PEARSON, L.J.J., delivered concurring judgments. Appeal dismissed.

APPEARANCES: D. Brabin, Q.C., and Derek Hodgson, Q.C. (Hewitt, Woollacott & Chown, for Shaw Smith & Co., Manchester); N. R. Fox-Andrews, Q.C., and Paul Chadd (Pattinson & Brewer, for Lawrence Williams & Co., Bristol).

[Reported by Miss M. M. Hill, Barrister-at-Law]

Chancery Division**STAMP DUTY: TRANSFER OF STOCK ON
CONDITIONAL OFFER: ACQUISITION OF
DISSENTING SHAREHOLDER'S STOCK:
WHETHER TRANSFERS ON SALE****Ridge Nominees, Ltd. v. Inland Revenue
Commissioners**

Buckley, J. 23rd March, 1961

Case stated by Inland Revenue Commissioners.

A company offered to purchase the whole of the stock of another company from the stockholders at a stated price, the offer being "conditional upon acceptance on or before 4th December, 1958 . . . by the holders of 90 per cent. of the issued capital . . ." The stockholders were told, if they wished to accept, to sign a form of acceptance and a transfer of their stock and send them to a certain address. The acquiring company undertook to return the acceptance and

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cancelled transfer with the certificate or to re-transfer if the offer was not accepted by the holders of a sufficient number of stock units. In November, 1958, two stockholders signed the acceptances and executed transfers of their stock. Subsequently, acceptances having been received from the holders of 90 per cent. of the stock, a transfer was executed under s. 209 of the Companies Act, 1948, on behalf of a stockholder who declined to accept the offer. The Commissioners were of opinion that each of the instruments was a "conveyance or transfer on sale" for the purposes of the Stamp Act, 1891, and was accordingly chargeable with ad valorem duty. The company appealed.

BUCKLEY, J., said that as soon as any stockholder accepted the offer there was a contract of sale between the acquiring company and that stockholder which was conditional only in the sense that, it being a binding and completed contract, some of the rights and obligations under it were dependent on certain conditions. The fact that it was conditional did not make it any the less a contract of sale and the transfers executed by the accepting stockholders were conveyances on sale within s. 54 of the 1891 Act and liable to ad valorem duty as conveyances or transfers on sale of their stock under Sched. I to the Act, notwithstanding that in certain circumstances the purchaser might be in a position to call the deal off. In the case of the transfer under s. 209 of the Act of 1948 there was lacking the element of consensus between a vendor and purchaser which was involved in the proper meaning of the word "sale" in Sched. I to and s. 54 of the Stamp Act, 1891. *Prima facie*, therefore, such a transaction did not constitute a "sale" and did not attract duty as a "conveyance or transfer on sale." That the Legislature had provided that somebody purporting to act on behalf of the shareholder might execute a transfer which would have the effect of divesting him of the shares did not make that transfer a transfer on sale or the dissenting shareholder one who must be taken to have assented to his shares being sold. That transfer, therefore, ought not to be stamped as a transfer on sale. Appeal allowed in part.

APPEARANCES: K. W. Mackinnon, Q.C., and J. G. Monroe (Coward, Chance & Co.); H. B. Magnus and E. Blanshard Stamp (Solicitor of Inland Revenue).

[Reported by K. R. A. HART, Esq., Barrister-at-Law]

CAPITAL OR INCOME: RENT: DEATH OF LANDLORD ON QUARTER DAY

In re Aspinall's Will Trusts; Aspinall v. Aspinall

Buckley, J. 19th May, 1961

Adjourned summons.

By his will, dated 30th September, 1954, a testator directed his executor to hold his residuary estate on trust to pay the income to his wife during her life and thereafter for his son absolutely. The testator died at 8.30 a.m. on 25th December, 1954; his will was proved on 13th January, 1955. At the date of his death he owned certain leasehold premises which were subject to sub-leases under which certain rents were payable in advance and certain rents in arrears on the usual quarter days. The son took out a summons to determine whether, by reason of the death of the testator on 25th December, 1954, the sums received by his executor since his death were to be treated as capital or income or were to be apportioned.

BUCKLEY, J., said that there was no rule that the principle that the law paid no attention to fractions of a day should be applied in every case. The test was whether, at the time of the testator's death, a cause of action to recover the rents had accrued. If it had, the fruits constituted part of the *corpus* of the estate; if it had not, they formed income. The tenants' liability to pay their rents did not mature until midnight of 25th December, 1954, so that no cause of action formed part of the testator's estate at the time of his death

and the rents should thus be treated as income. There would, however, be an apportionment of one day's rent which should be treated as accruing in the testator's lifetime and was thus capital.

APPEARANCES: Andrew Goodall (Theodore Goddard & Co.); J. H. Hames (Jaques & Co.); Oliver R. Smith (Lipton & Jefferies).

[Reported by Miss M. G. THOMAS, Barrister-at-Law]

WILL: INSANE MURDERER: WHETHER ENTITLED TO BENEFIT

**In re Batten's Will Trusts*

Pennycuik, J. 6th June, 1961

Adjourned summons.

By her will the testatrix gave her estate to her husband if he survived her. On 25th July, 1958, the husband killed the testatrix. He was subsequently charged with her murder but was found unfit to plead and ordered to be detained during Her Majesty's pleasure. Evidence was filed to the effect that the husband was insane at the date when he killed his wife.

PENNYCUICK, J., said that the evidence showed beyond all reasonable doubt that the testatrix was killed by her husband and, on the evidence, the only possible conclusion was that he was then insane. It was established by judicial decision that a person who feloniously killed another was disqualified from taking either under that person's will or intestacy and also that the rule did not apply where the murderer was insane and the murdered person died intestate. There was no judicial decision applicable to the case where the murderer was insane and the murdered person left a will. There was, however, no distinction, in principle, between the two cases and there were at least three dicta suggesting that it made no difference whether the person murdered died intestate or left a will: see *In re Houghton* [1915] 2 Ch. 173, at p. 178; *In re Pitts* [1931] 1 Ch. 546, at p. 550; *In re Pollock* [1941] Ch. 219, at p. 222. It followed that, in the present case, the exception applied and the husband was absolutely entitled to his wife's estate under her will. Order accordingly.

APPEARANCES: Michael Fox (Champion & Co.); L. H. L. Cohen (Willis & Willis); Andrew Goodall (Woodcock, Ryland & Co., for Wade & Son, Newport, Monmouthshire.)

[Reported by Miss V. A. Moxon, Barrister-at-Law]

NAME AND ARMS CLAUSE: VALIDITY

In re Delme-Radcliffe

Buckley, J. 6th June, 1961

Adjourned summons.

The plaintiff, an infant aged 19, was entitled as tenant-in-tail in possession to the whole of a property resettled by an indenture of 13th February, 1907, her father having surrendered his life interest with remainders over, and subject to defeasance in the event of the birth of a son to her father. The indenture contained a clause providing that every person who became entitled as tenant-in-tail in possession to the property should take, use and bear the surname and arms of Delme-Radcliffe, and continue to do so, and if anyone so entitled should refuse to comply or discontinue to do so then all their estate should absolutely determine and be void, provided that the obligation should not apply to an infant until he or she attained the age of 21, and provided that six months from the date when the obligation became binding should be allowed for compliance therewith. At the date of the proceedings the plaintiff's father was eighty-four years old and her mother sixty-two. The plaintiff intended to marry within a few days a man who was unwilling to change his name to Delme-Radcliffe either before or after marriage.

The summons asked whether the clause was binding on the plaintiff, or was void for uncertainty or as being against public policy.

BUCKLEY, J., said that it had been contended that the clause was void as being contrary to public policy in so far as it applied to the plaintiff during coverture. There was a series of decisions in which names and arms clauses were held to be contrary to public policy in so far as they applied to married women. Wilberforce, J., in *In re Howard's Will Trusts* [1961] 2 W.L.R. 821; p. 37, *ante*, had expressed some personal doubts as to the reasons for applying the doctrine of public policy to clauses of this kind with which he would like to associate himself. But Wilberforce, J., had concluded that he was bound to follow them, as he, his lordship, was also bound to do. He could find no ground on which to distinguish *In re Fry* [1945] Ch. 348, where a condition was imposed on married women without including their husbands, and so he followed it. It had been argued that this condition was applicable to each successive interest and that one had to consider in respect of each interest whether the condition was good or bad. It seemed to his lordship that the doctrine of public policy was one which it was quite appropriate to apply in that sort of way; there was no reason why, because it would be contrary to public policy to enforce a condition against a class, the condition was therefore ineffective as against beneficiaries who were not members of the class. The clause was not binding on the plaintiff while she was an infant or thereafter while her father was alive or at any time while she was under coverture. Declaration accordingly.

APPEARANCES: *Eric Griffith (Martineau & Reid)*; *John Bouyer (Pothecary & Barratt)*.

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

Queen's Bench Division

TRADE DISPUTE: THREAT TO STRIKE IN BREACH OF CONTRACT: WHETHER UNLAWFUL ACT

Rookes v. Barnard and Others

Sachs, J. 19th May, 1961

Action.

The plaintiff, a senior draughtsman employed by B.O.A.C. in their design office, was a member of the Association of Engineering and Shipbuilding Draughtsmen until November, 1955, when he resigned. On 1st April, 1949, an agreement was made between the employers' and employees' side of the National Joint Council for Civil Air Transport providing that no strike action should take place, and that agreement was part of the contract of employment of each member of A.E.S.D. employed in the design office. In addition, there was an oral understanding between the trade union and the corporation that, once a declaration of 100 per cent. membership had been made by the union, non-union staff would not be recruited and members could resign without losing their employment. In November, 1955, the plaintiff resigned from the union. On 16th March, 1956, B.O.A.C. terminated the plaintiff's employment. The plaintiff sued the defendants, certain trade union officials, alleging that they had threatened him and the corporation that, unless he rejoined the union, a strike would take place; had tried to persuade other unions to take sympathetic strike action; had procured the members of A.E.S.D. to agree to a strike and had delivered a resolution to that effect to the corporation. During the hearing, Sachs, J., ruled that the defendants' acts were done in furtherance of a trade dispute. On 5th May, 1961, a jury awarded the plaintiff damages against the defendants for conspiring by unlawful means to induce B.O.A.C. to terminate his contract of employment. This report is solely concerned with the

defendants' claim that they were protected by ss. 1 and 3 of the Trade Disputes Act, 1906.

SACHS, J., said that it had long been settled that it was an actionable wrong to intimidate other persons so as to make them act in a manner in which they had a legal right to act, but which was likely to result in loss to the plaintiff, and equally settled that a threat to procure the commission of an unlawful act constituted such intimidation. Though there was no direct decision on the question whether a threat to break a contract was an "unlawful act" for this purpose, judicial views were in favour of holding such a threat to be actionable if injury resulted. He could not accept the arguments that the threat of any one of the defendants could not of itself be said to have caused the dismissal; or that no special damage had been established and that proof of damage was an essential ingredient in the tort. The defendants therefore were not protected by s. 1 of the Act. With regard to s. 3, it should be so construed as to avoid giving employees freedom to use, in furtherance of a trade dispute, means which were of themselves unlawful or in impairment of their obligations. Judgment for the plaintiff.

APPEARANCES: *Neville Faulks, Q.C.*, and *S. C. Silkin (Lewis Silkin & Partners)*; *John Thompson, Q.C.*, and *Colin Duncan (W. H. Thompson)*.

[Reported by Mrs. H. J. KELLY, Barrister-at-Law]

MONEYLENDERS: WORDS OMITTED FROM MEMORANDUM: INTEREST *Edgware Trust, Ltd. v. Lawrence*

Diplock, J. 1st June, 1961

Action.

The defendant borrowed from the plaintiffs, a firm of licensed moneylenders, in a series of transactions sums ranging between £200 and £2,000 at rates of interest of 60 and 64 per cent. In all the transactions a standard form of promissory note and memorandum was used. By a re-printing error, made some years before, a line of print had been omitted from the memorandum. The defendant, as the plaintiffs knew, possessed share capital of over £200,000. The shares were not easily realisable, but one of the later transactions was effected after some of his assets had been realised. The defendant repaid six of the loans, and the plaintiffs now claimed repayment of the principal of the remaining loans with interest amounting to £5,166. The defendant admitted that the sums were borrowed, but denied that he was indebted to the plaintiffs on the grounds that (1) the plaintiffs in each of their contracts of loan had provided a memorandum which, in breach of s. 6 of the Moneylenders Act, 1927, failed to include all the terms of the contract, and (2) the interest charged was excessive and each of the transactions was harsh and unconscionable under s. 1 of the Money-lenders Act, 1900, and on that ground he sought to have the six repaid transactions re-opened.

DIPLOCK, J., finding that the defendant succeeded on the first ground and that the three unrepaid loans were unenforceable, said that although the terms of the promissory notes were clear, the omission of the line in the memorandum made it unintelligible, and he could not put a meaning to it, certainly not the meaning that was clear in the promissory notes. Therefore, the memorandum did not contain all the terms of the contract. Where a memorandum did not contain all the terms of the contract, it was not permissible to look at the promissory note to ascertain the missing term. The purpose of s. 6 of the Act of 1927 would be defeated unless the document in the possession of the borrower contained all the terms of the contract. As to the rate of interest, the plaintiffs had contended that 60 per cent. was reasonable in an average case: but this was far from an average case. As the plaintiffs knew, there was little danger that they would not get their money back and, in the circumstances, interest



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at 60 per cent. was too high; 40 per cent. would be appropriate on the earlier loans, and 30 per cent. on the one transaction made after the plaintiffs knew of the realisation of the defendant's assets. His lordship would order those transactions to be re-opened on that basis. Judgment for the defendant.

APPEARANCES: *A. B. King-Hamilton, Q.C.*, and *A. L. Figgis (C. M. A. Jacobs & Sons)*; *Desmond Ackner, Q.C.*, and *James Sen (Walter Burgess & Co.)*.

[Reported by PIER HERBERT, Esq., Barrister-at-Law]

Probate, Divorce and Admiralty Division

WILL: SEAMAN'S WILL: PRIVILEGE

***In the Estate of Wilson, deceased; Walker v. Treasury Solicitor**

Baker, J. 5th June, 1961

Probate action.

The plaintiff alleged that the deceased, whilst serving as a seaman in the Mediterranean Sea in 1944, made a will leaving all he possessed to her; that the will was privileged from compliance with the requirements of due execution of s. 9 of the Wills Act, 1837; that although the will could not be found after the deceased's death, the presumption that it was destroyed *animo revocandi* was rebutted, and she asked that the contents of the will, as proved by oral evidence, be admitted to probate. The defendant, the Treasury Solicitor, denied that the will was a privileged will, alleged that it was revoked, and counterclaimed the estate as *bona vacantia*, on the basis that the deceased died intestate, unmarried and without living kin. Baker, J., found on the evidence that on 30th March, 1944, the deceased and the plaintiff's son, who were then both serving in the same ship in the Mediterranean Sea, both decided to make wills; and that the plaintiff's son wrote out, on two separate pieces of paper, two documents, each in approximately the same words, and each leaving everything each man possessed to the plaintiff. Both documents were signed by both men, and were then placed in an envelope, it being agreed that the deceased would keep the envelope. That was the last the plaintiff's son saw of those documents. The deceased died suddenly, in Hong Kong Harbour, in 1950.

BAKER, J., said that in March, 1944, the deceased was a seaman at sea within the meaning of s. 11 of the Wills Act, 1837, and that the document by which he had left his possessions to the plaintiff was a privileged will. As that will was not forthcoming after the death of the testator, his lordship started with the presumption that it had been destroyed by him *animo revocandi*. That presumption was rebuttable, but the onus of rebutting it was upon the plaintiff. On the evidence, and particularly in view of letters written by the deceased up to within three days of his death which showed that he continued to regard the plaintiff in the same light as he had always done, the presumption was rebutted. The will would accordingly be upheld, and its contents as established by the evidence admitted to probate. The Treasury Solicitor's costs would be ordered to be paid out of the estate, on a common fund basis, with the curious result that he was in a better position in regard to costs by having lost the action than if he had won, since in the latter event, the plaintiff being legally assisted, and with a nil contribution, she could not have been ordered to pay the Treasury Solicitor's costs.

APPEARANCES: *Geoffrey Crispin, Q.C.*, and *Peter Coni (Gregory, Rowcliffe & Co., for Hadaway & Hadaway, North Shields)*; *C. Trevor Reeve (Treasury Solicitor)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

HUSBAND AND WIFE: DECREE OF JUDICIAL SEPARATION: LIMITED APPEARANCE ENTERED: WHETHER DISCRETION TO REVERSE DECREE

Wilkinson v. Wilkinson

Karminski, J. 7th June, 1961

Petition for reversal of decree of judicial separation.

A husband petitioned under s. 14 (3) of the Matrimonial Causes Act, 1950, for the reversal of a decree of judicial separation granted to his wife in December, 1958, on the ground of cruelty, the ground of the petition being that the decree had been made in the husband's absence. When the wife's petition for judicial separation was served on the husband, he hoped that she would change her prayer to that of dissolution, and he entered a limited appearance in the suit, indicating that he did not intend to defend the charge of cruelty. Later, he decided to defend the charge and to make cross-charges against the wife, and to pray for divorce. In August, 1958, the wife's solicitors set the case down for hearing, on the basis that the husband was not defending.

KARMINSKI, J., found on the evidence that notice of setting down was not received by the husband's solicitors. His lordship said that, in the result, the wife was granted a decree of judicial separation in an undefended suit. The court had power to reverse a decree of judicial separation on the ground that it was obtained in the absence of the spouse against whom it was pronounced. As *Phillips v. Phillips* (1866), 1 P. & D. 169, showed, the word "absence" in that context meant physical non-appearance, and not non-appearance in the sense of not having entered an appearance in the suit. His lordship therefore had a discretion to reverse the decree granted to the wife and, in the circumstances, he felt bound to exercise that discretion in favour of reversal. Order accordingly.

APPEARANCES: *Norman Oster (Leonard Kasler & Co.)*; *Harry Lester and Mrs. Mary Prevost (Darracotts)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: ADULTERY OF PETITIONER: DISCRETION STATEMENT: CONTENTS

Giscombe v. Giscombe

Wrangham, J. 8th June, 1961

Suit for divorce.

A husband petitioned for divorce on the ground of his wife's desertion. The husband asked for the exercise of the court's discretion in respect of his adultery, and had lodged a discretion statement, which he put in evidence at the hearing of the suit. This discretion statement recited that the husband had "committed adultery on a number of occasions" with a woman whose name was given, but contained no details of the place or places where, or the frequency with which, adultery had taken place.

WRANGHAM, J., said that merely to state that the party seeking the court's discretion had committed adultery on a number of occasions was to employ a formula which would be equally applicable whether a man and woman had lived together as man and wife, or had committed casual acts of adultery, on a few occasions, in the open air. His lordship had met this formula before. He wished he could do something to induce those who drafted discretion statements to realise that it was a highly unsatisfactory formula. Discretion statements should contain the details required by r. 28 of the Matrimonial Causes Rules, 1957. In the present case, his lordship had allowed the husband to supplement the contents of his discretion statement by oral evidence, and, being satisfied that the charge of desertion had been proved and that it was a case in which the court's discretion should be exercised in the husband's favour, pronounced a decree nisi.

APPEARANCES: *David Stinson (Edward Crawley & Co.)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: MARRIAGE IN DUBLIN: METHOD OF PROOF**Todd v. Todd**

Wrangham, J. 9th June, 1961

Undefended suit for divorce.

A wife petitioned for divorce on the ground of the husband's adultery. The parties were married in June, 1931, at St. Lawrence's Church, Dublin. The question arose how the marriage should be proved.

WRANGHAM, J., said that, whatever may have been the position at an earlier period in the history of Ireland, it seemed to him that a marriage celebrated in what was now the Republic of Eire must be proved in the same way as a marriage celebrated in a foreign country. Accordingly, counsel took the right course in calling an expert in the law of Eire to establish that the marriage certificate in this case would be accepted in the courts of Eire as *prima facie* evidence of the celebration of a valid marriage. That evidence being accepted, and the husband's adultery being proved, the wife was granted a decree nisi.

APPEARANCES: *Eric Stockdale (Stocken, May, Sykes & Dearman)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

DIVORCE: ADULTERY: DEFENCE OF INSANITY**S v. S and O and B**

Mr. Commissioner Latey, Q.C. 9th June, 1961

Defended suit for divorce.

A wife petitioned for divorce on the ground of her husband's adultery with the intervener. The husband admitted the act of adultery alleged in the petition, and cross-charged the wife with adultery with the party cited, cross-praying for divorce. The act of adultery admitted by the husband took place at a mental hospital where he was employed as a porter, the intervener being an in-patient there. The intervener, by the Official Solicitor as her guardian *ad litem*, filed an answer pleading that she was not guilty of adultery in that, at the time the act of adultery took place, she was suffering from defect of reason due to disease of the mind, as a result of which she did not know that what she was doing was wrong. The evidence of the psychiatrist in whose care the intervener was established that the intervener suffered from schizophrenia and that, at the time of the act of intercourse, her mental condition was such that, although she would have known that she was in fact in the process of sexual intercourse, she would not have known that promiscuous sexual intercourse was wrong.

Mr. COMMISSIONER LATEY, Q.C., said that he accepted the psychiatrist's evidence, and that brought the intervener within the second branch of the McNaghten Rules. The question, therefore, was whether that defence applied to a charge of adultery. His lordship accepted the submission on behalf of the intervener that it did. It followed that the intervener was not guilty of adultery and must be dismissed from the suit. The charge of adultery against the wife and the party cited having failed, the husband's prayer would be dismissed, and the wife would be granted a decree nisi on the ground of the husband's adultery with a woman against whom the case had not been proved. Decree nisi.

APPEARANCES: *Mark Smith (W. H. Matthews & Co., Sutton); H. M. Self (J. I. Humphreys & Co.); L. I. Stranger-Jones (Official Solicitor); Duncan Ranking (P. Lupton, Law Society)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

Court of Criminal Appeal**MOTING OFFENCES: BAD RECORD: WHETHER PREVENTIVE DETENTION APPROPRIATE****R. v. Smith**

Ashworth, Salmon and Elwes, JJ. 5th June, 1961

Appeal against sentence.

The appellant pleaded guilty to driving whilst under the influence of drink and to driving while disqualified, for which he received concurrent sentences of eight years' preventive detention and six months' imprisonment, respectively. Since 1952 he had had twelve previous convictions for similar motoring offences, and on the last occasion he had been sentenced to sixteen months' imprisonment for driving while under the influence of drink, to run concurrently with the maximum sentence of six months' imprisonment for driving while disqualified; in addition he was disqualified for life. On appeal against sentence it was contended that preventive detention was not appropriate for this type of offence, and that the difference between his longest previous sentence of imprisonment, sixteen months, and eight years' preventive detention, was disproportionate.

ASHWORTH, J., said that the appellant's driving record was as bad as anyone's could be in the sense of deliberate flouting of the law. Although the occasions on which a sentence of preventive detention could properly be passed for this type of offence must be exceedingly rare, it was not right to say that it would never be appropriate when a defendant had a record of this sort. There was no statutory limitation as to the class of offence for which preventive detention might be imposed and there was no sound reason for excluding the possibility of it being passed for offences such as these. The maximum sentence for driving while under the influence of drink was two years and for driving while disqualified only six months. The latter sentence was one which, on the facts of this case, called loudly for reconsideration by those responsible for dealing with these matters: if ever a man deserved by persistent driving while disqualified a longer term for the offence than six months, the appellant did so. In the circumstances, since the appellant had not previously undergone a term longer than sixteen months, the court felt that the time had not come for preventive detention, although he must realise that the commission of any further offences of the same nature would make such a sentence almost inevitable. A sentence of two years' imprisonment would be substituted for the sentence of preventive detention, to run consecutively with the six months' sentence. Appeal allowed.

APPEARANCES: *T. H. K. Berry (Registrar, Court of Criminal Appeal)*.

[Reported by PIERRE HERBERT, Esq., Barrister-at-Law]

Restrictive Practices Court**RESTRICTIVE PRACTICES: DELIVERY OF PLEADINGS: UNREASONABLE DELAY: COSTS****In re Wire Nail Manufacturers' Agreement**

Pearson and Russell, JJ., Sir Stanford Cooper, Mr. W. L. Heywood and Mr. C. C. W. Havell. 1st February, 1960

Appeal from the clerk of the court.

On 19th March, 1959, the registrar referred to the court a price fixing agreement between the respondents, nine individual manufacturers of wire nails. The time for delivery of the respondents' statement of case and list of documents expired

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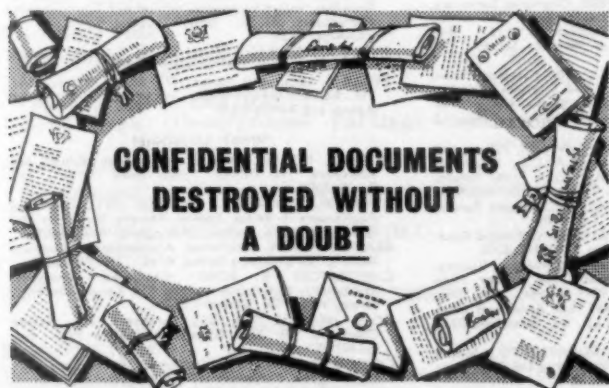
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(Continued on p. xix)

Please mention "THE SOLICITORS' JOURNAL" when replying to Advertisements

on 20th June, 1959. In all, five extensions of time were granted, the last expiring on 16th December, 1959. On 8th December the respondents applied for a further extension; that application was opposed by the registrar and refused by the clerk of the court. The respondents appealed. By the time the appeal was heard the statement of case and list of documents had been filed. The registrar applied for costs under r. 76 of the Restrictive Practices Court Rules, 1957.

PEARSON, J., said that there would be no order on the appeal except that the purported filing and delivery of the statement of case and list of accompanying documents should be treated as good and valid. In the view of the court there had been unreasonable delay on the part of the respondents and they would be ordered to pay 25 guineas costs. Order accordingly.

APPEARANCES: *Walter Gumbel (Allen & Overy); John Donaldson (Treasury Solicitor).*

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law] [1 W.L.R. 914]

THE WEEKLY LAW REPORTS

CASES INCLUDED IN TODAY'S ISSUE OF THE W.L.R.

	Vol.	Page
Hayward v. Hayward (otherwise Prestwood) ..	2	993
McCullie v. Butler (p. 445, ante) ..	2	1011
Marten v. Flight Refuelling, Ltd. (p. 442, ante) ..	2	1018
Ridge v. Baldwin (p. 384, ante) ..	2	1054
Roberts (A.) & Co., Ltd. v. Leicestershire County Council (p. 425, ante) ..	2	1000
Yorkshire Insurance Co., Ltd. v. Nisbet Shipping Co., Ltd. (p. 367, ante) ..	2	1043

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Great Ouse Water Bill [H.C.]	[5th June.
Land Drainage Bill [H.C.]	[5th June.
River Ravensbourne &c. (Improvement and Flood) Prevention Bill [H.C.]	[5th June.

Read Second Time:—

Covent Garden Market Bill [H.C.]	[8th June.
Local Authorities (Expenditure on Special Purposes) (Scotland) Bill [H.C.]	[6th June.
Manchester Corporation Bill [H.C.]	[8th June.
Middlesex County Council Bill [H.C.]	[8th June.
Printer's Imprint Bill [H.C.]	[8th June.

Read Third Time:—

Affiliation Proceedings (Blood Tests) Bill [H.L.]	[8th June.
Carriage by Air Bill [H.C.]	[8th June.
Hyde Park (Underground Parking) Bill [H.C.]	[8th June.

In Committee:—

Department of Technical Co-operation Bill [H.C.]	[8th June.
Sheriffs' Pensions (Scotland) Bill [H.C.]	[6th June.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

British Transport Commission Order Confirmation Bill [H.C.]	[8th June.
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To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the British Transport Commission.

Montrose Burgh and Harbour (Amendment) Order Confirmation Bill [H.C.] [8th June.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Montrose Burgh and Harbour.

Read Second Time:—

Saint Benet Sherehog Churchyard Bill [H.L.]	[6th June.
Saint Pancras, Pancras Lane Churchyard Bill [H.L.]	[6th June.

Read Third Time:—

Consumer Protection Bill [H.C.]	[9th June.
Small Estates (Representation) Bill [H.C.]	[9th June.
Teeside Railless Traction Board (Additional Route) Provisional Order Bill [H.C.]	[8th June.

In Committee:—

Finance Bill [H.C.]

[8th June.

STATUTORY INSTRUMENTS

Cereals (Deficiency Payments) (Amendment) Order, 1961. (S.I. 1961 No. 1072.)	5d.
Cereals (Protection of Guarantees) (Amendment) Order, 1961. (S.I. 1961 No. 1071.)	5d.
Charities (Exception of Certain Charities for Boy Scouts and Girl Guides from Registration) Regulations, 1961. (S.I. 1961 No. 1044.)	4d.
Courts-Martial Appeal (Amendment) Rules, 1961. (S.I. 1961 No. 1015.)	4d.
Craven Water Board (Carleton Waterworks) Order, 1961. (S.I. 1961 No. 1010.)	4d.
Eastbourne Water (Financial Provisions) Order, 1961. (S.I. 1961 No. 1011.)	5d.
European Free Trade Association (Immunities and Privileges) Order, 1961. (S.I. 1961 No. 1000.)	5d.
Export of Goods (Control) Order, 1960 (Amendment No. 2) Order, 1961. (S.I. 1961 No. 1034.)	6d.
Fylde Water Board (Broughton Scheme) Order, 1961. (S.I. 1961 No. 1042.)	5d.
Parking Places (Westminster) (No. 1, 1958) (Amendment No. 3) Order, 1961. (S.I. 1961 No. 1037.)	6d.
Parking Places (Westminster) (No. 1, 1959) (Amendment No. 2) Order, 1961. (S.I. 1961 No. 1038.)	6d.
Parking Places (Westminster) (No. 1, 1960) (Amendment No. 2) Order, 1961. (S.I. 1961 No. 1039.)	5d.
Patents Appeal Tribunal (Amendment) Rules, 1961. (S.I. 1961 No. 1016.)	4d.

These rules insert in the Patents Appeal Tribunal Rules, 1950, a provision requiring a respondent to give notice of any intention on his part to support the decision appealed against on new grounds. They also make a minor correction in r. 1 of the 1950 rules.

Stopping up of Highways Orders, 1961:—

County of Bristol (No. 6). (S.I. 1961 No. 990.)	5d.
County of Buckingham (No. 6). (S.I. 1961 No. 1013.)	4d.
County of Derby (No. 6). (S.I. 1961 No. 1021.)	5d.
London (No. 21). (S.I. 1961 No. 1047.)	5d.
City and County of Newcastle upon Tyne (No. 1). (S.I. 1961 No. 1036.)	5d.
County Borough of Southampton (No. 3). (S.I. 1961 No. 1014.)	5d.

Treasury (Loans to Local Authorities) (Interest) Minute, 1961. (S.I. 1961 No. 1040.)	5d.
Treasury (Loans to Persons Other than Local Authorities) (Interest) Minute, 1961. (S.I. 1961 No. 1041.)	5d.

Wages Regulation (Hairdressing) Order, 1961. (S.I. 1961 No. 1026.) 11d.
Wages Regulation (Retail Food) (Scotland) Order, 1961. (S.I. 1961 No. 1032.) 11d.
Wages Regulation (Retail Newsagency, Tobacco and Confectionery) (Scotland) Order, 1961. (S.I. 1961 No. 1031.) 11d.
Wages Regulation (Stamped or Pressed Metal-Wares) (Amendment) Order, 1961. (S.I. 1961 No. 1033.) 6d.
West Lothian Water Board (Amendment) Order, 1961. (S.I. 1961 No. 975 (S.61).) 5d.

SELECTED APPOINTED DAYS

June

2nd **Wages Regulation (Rubber Proofed Garment) Order, 1961.** (S.I. 1961 No. 955.)
 5th **Wages Regulation (Retail Bookselling and Stationery) Order, 1961.** (S.I. 1961 No. 903.)
Wages Regulation (Retail Newsagency, Tobacco and Confectionery) (England and Wales) Order, 1961. (S.I. 1961 No. 921.)

June (continued)

12th **Wages Regulation (Retail Bread and Flour Confectionery) (England and Wales) Order, 1961.** (S.I. 1961 No. 942.)
Wages Regulation (Retail Food) (England and Wales) Order, 1961. (S.I. 1961 No. 922.)
 16th **Wages Regulation (Stamped or Pressed Metal-Wares) (Amendment) Order, 1961.** (S.I. 1961 No. 1033.)
 18th **Private Street Works Act, 1961.**
Restriction of Offensive Weapons Act, 1961.
 19th **Patents Appeal Tribunal (Amendment) Rules, 1961.** (S.I. 1961 No. 1016.)
 22nd **Charities Act, 1960, s. 4, in relation to charities for the benefit wholly or mainly of any part of Bedfordshire or Surrey, including Croydon.**
Charities (Exception of Certain Charities for Boy Scouts and Girl Guides from Registration) Regulations, 1961. (S.I. 1961 No. 1044.)
Charities (Exception of Religious Charities from Registration) Regulations, 1961. (S.I. 1961 No. 986.)

QUEEN'S BIRTHDAY LEGAL HONOURS

LIFE PEER (BARON)

Sir ALEXANDER MONCRIEFF COUTANCHE, Bailiff of Jersey since 1935. Called to the Jersey Bar, 1913, and by the Middle Temple, 1915.

BARONET

Sir JOHN MAXWELL ERSKINE, director of the Commercial Bank of Scotland; deputy chairman of the North of Scotland Hydro-Electric Board. Solicitor.

KNIGHTS BACHELOR

SALAKO AMBROSIOUS BENKA-COKER, Chief Justice of Sierra Leone.

Professor JOHN BOYD, Emeritus Professor of Mercantile Law, University of Glasgow; vice-president of the Law Society of Scotland, 1954-55.

LIONEL BRETT, Judge of the Federal Supreme Court, Federation of Nigeria. Called by the Inner Temple, 1937.

Hon. FRANCIS ARTHUR BRIGGS, Judge of the Federal Supreme Court, Federation of Rhodesia and Nyasaland. Called by the Inner Temple, 1928.

RALPH ABERCROMBY CAMPBELL, Chief Justice of the Bahamas. Called by Lincoln's Inn, 1928.

ROBERT JOHN DAVIES. Admitted 1930.

TREVOR JACK GOULD, Justice of Appeal, Court of Appeal for Eastern Africa. Barrister and solicitor, Supreme Court of New Zealand, 1928.

DENYS THEODORE HICKS, president of The Law Society. Admitted 1931.

CLIFFORD DE LISLE INNISS, Chief Justice of British Honduras. Called by the Middle Temple, 1935.

Brigadier DONALD MACKINNON, Administrator of the Territory of Papua and New Guinea. Barrister and solicitor, Western Australia, 1925.

Hon. SAMUEL OKIE QUASHIE-IDUN, Chief Justice of the Western Region, Federation of Nigeria.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Hon. OLIVER HOWARD BEALE, Q.C., Her Majesty's Australian Ambassador to the United States. Called to the Bar, 1925, and took silk 1950.

C.B.E.

GEORGE BASIL THOMAS BARR, assistant legal adviser, Home Office. Called by Gray's Inn, 1931.

DOUGLAS FREEMAN COUTTS, registrar, West London and Wandsworth County Courts. Admitted 1920.

C.B.E. (continued)

JAMES NAUGHTON DANDIE, president of the Law Society of Scotland.

GEOFFREY CHAPMAN GODBER, clerk of the Shropshire County Council and chairman of the Society of Clerks of the Peace. Admitted 1936.

JOHN SHERIDAN HICKEY, legal adviser to Her Majesty's Embassy, Paris. Admitted 1924.

FREDERICK HUGH DALZEL PRITCHARD, secretary general, British Red Cross Society. Admitted 1931.

O.B.E.

EDWARD JOHN ASHMAN, assistant controller of Death Duties, Board of Inland Revenue.

Maitre SAMUEL BENATTAR, legal adviser to Her Majesty's Embassy, Tunis.

MICHAEL DOHERTY, registrar of the High Court of Australia.

ALBERT GARD, chairman, Plymouth, Devonport and Cornwall Trustee Savings Bank. Admitted 1901.

AHMAD MUHAMMAD HASSAN HIJAZI, Judge of Her Majesty's Court, Kuwait.

Miss AGNES WINIFRED KNIGHT, senior legal assistant, Solicitor's Department, New Scotland Yard. Admitted 1936.

Lieutenant-Colonel CHARLES PATRICK BAILLIE KNIGHT, Army Legal Services Staff List. Admitted 1930.

EDWARD ARTHUR PLATT, temporary legal assistant, Ministry of Agriculture, Fisheries and Food. Admitted 1914.

EDWARD LEVERTON RUSSELL, senior principal clerk, Companies Court, Lord Chancellor's Departments.

M.B.E.

ALFRED EDWARD BICKERSTAFF, chief clerk, District Probate Registry, Bangor.

JOHN CHARLES EAMES, senior executive officer, Her Majesty's Land Registry.

LEOPOLD PALIANDY KERRY, lately conveyancing officer, Deeds Registry, British Guiana.

JOHN WILLIAM WINTER, town clerk, Huntingdon and Godmanchester Borough Council. Admitted 1919.

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Assent by Surviving Administrator in Her Own Favour Absolutely

Q. *A* died in 1940 intestate possessed of real and personal estate, and leaving a widow *W* and an only son *S*. *W* and *S* were appointed administrators of *A* and paid the debts, duties and funeral expenses, and in 1941 *W* and *S* effected an appropriation whereby half of the residuary estate was retained by the administrators in respect of *W*'s life interest and the remaining half appropriated to *S* absolutely. It is considered that the appropriation document did not constitute an assent and that *W* and *S* remained administrators of *A*. *S* has recently died, having by his will devised and bequeathed all his property real and personal to *W* absolutely. Can *W* now execute a simple assent in her own favour absolutely in respect of the real property held in trust in respect of her life interest? It will be appreciated that she has both the life interest and reversionary interest therein and these will most likely merge. In view of the case of *Re Yerburch* [1928] W.N. 208, can a surviving administrator execute an assent of this nature? Would it be preferable if the vesting in *W* absolutely was recorded by a declaration on the lines of Precedent No. 22 in the Encyclopædia of Forms and Precedents, 3rd ed., vol. 18, p. 113?

A. In our opinion the surviving administrator can validly assent. The assent will become sufficient evidence in favour of a purchaser that it is made to the proper person (Administration of Estates Act, 1925, s. 36 (7); Emmet on Title, 14th ed., vol. 2, p. 473; see also the comment in Emmet, op. cit., p. 474, para. 4, as to a parallel case). This will override any implication that there has been a previous implied assent by the administrators in their own favour as trustees for sale as explained in *Re Yerburch* [1928] W.N. 208. It is perfectly proper to assent in favour of a person who has become beneficially entitled after the death of the deceased by further devolution or appropriation (Administration of Estates Act, 1925, s. 36 (1)). We see no advantage in using the precedent you quote; in fact, we think that it has the disadvantage of bringing the equities on to the title.

Settled Land—SURRENDER OF POWERS OF ONE JOINT TENANT FOR LIFE

Q. *A* and *B* are joint tenants for life under the Settled Land Act pursuant to a will and a vesting assent made thereunder. *A* has surrendered by deed his life interest to *B*. How can *A* surrender his interest in the legal estate and his statutory powers as tenant for life so as to vest the fee simple and all the statutory powers in *B* alone?

A. The short answer is: *A* cannot. *A* and *B* together constitute the tenant for life for the purposes of the Settled Land Act, 1925 (s. 19 (2)), and s. 104 of that Act prohibits the tenant for life, in effect, from parting with his powers. The circum-

stances given in the question are not within the only exception to the above, which is contained in s. 105 of the Act. This will seem less unreasonable if it is recalled that *A* and *B*, as the tenant for life, are trustees: s. 107 of the Act. If difficulty arises, presumably resort may be had to the limited relief afforded by s. 24 of the Act.

Damage by Mining Subsidence—NON-SEVERANCE CASES

Q. Summarised, the provisions of the Coal Act, 1938, Sched. II, para. 6, relating to cases where the fee simple in coal and the fee simple in the land supported thereby were not severed prior to 1st January, 1939, in effect grant to the Coal Board a right to withdraw support from such land so far as reasonably requisite for the working of coal, subject to an obligation either to pay proper compensation for damage arising from such working to that land or to make good that damage to the reasonable satisfaction of the surface owner and without expense to him; and this obligation in either case extends to buildings and works on the land whether constructed before or after the coal vesting date. Our first point is doubtless naïve but we should nevertheless be glad of an answer; what is the authority for saying that the liability of the Coal Board is limited by these provisions to the liability therein set out? The second point is: is there anything in the Coal Act, 1938, to support the contention of the Coal Board that the choice between the two alternatives (to pay compensation or to do repair work) rests with the Coal Board, and, as a supplementary, what in your opinion is the basis for the calculation of "proper compensation"? We have argued that, since payment of compensation is equated in the Act (admittedly in the alternative) with doing repairs, the amount of such compensation should be approximately equivalent to the estimated cost of doing repairs but the Coal Board insist that the amount of proper compensation is represented by the formula "pre-damage value less damaged value."

A. (i) When a statute authorises the commission of what would otherwise be a tort, the party injured has no remedy apart from that which the statute allows him: Winfield on Tort, 6th ed., p. 68. It follows that the Coal Board's liability is limited by the provisions of the Coal Act, 1938, Sched. II, para. 6. (ii) The relevant provisions confer upon the Coal Board "a right to withdraw support from that land so far as may be reasonably requisite for the working of any coal," subject to the obligation either (a) to pay proper compensation, or (b) to make good the damage. On the face of it, the Coal Board appear to be able to choose between the two alternatives, and the fact that consent to (b), alone, "shall not be unreasonably withheld" seems to support this interpretation. (iii) It seems that the measure of damages is the difference in the saleable value of the land before and after the subsidence: see Bowen on the Coal Act, 1938, p. 201.

BOOKS RECEIVED

Precedent in English Law. By RUPERT CROSS, Fellow of Magdalen College, Oxford. pp. viii and (with Index) 268. 1961. London: Clarendon Press; Oxford University Press. £1 1s. net.

Procedure, Penalties and Orders in Magistrates' Courts: Road Traffic Supplement. Second Edition. pp. 52. 1961. London: Shaw & Sons, Ltd. 7s. 6d. net.

Intent to Kill. The transcript of papers given by EDWARD GRIEW, M.A., LL.B., and J. E. WILLIAMS, LL.M., Wales, at the Haldane Society's Symposium on "The Doctrine of Intent in Criminal Law—with reference to *Director of Public Prosecutions v. Smith*." May, 1961. London: The Haldane Society. 2s. 6d. net.

Oyez Practice Notes No. 40: Hire-Purchase and Credit Sales. Second Edition. By W. D. PARK, Solicitor (Hons.). pp. (with Index) 92. 1961. London: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The Rent Acts. By R. E. MEGARRY, Q.C., M.A., LL.D., of Lincoln's Inn. Ninth Edition by ASHLEY BRAMALL, M.A., of the Inner Temple, Barrister-at-Law. pp. lxxxviii and (with Index) 897. 1961. London: Stevens & Sons, Ltd. £5 5s. net.

Justice According to the English Common Lawyers. By F. E. DOWRICK, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. pp. ix and (with Index) 251. 1961. London: Butterworth & Co. (Publishers), Ltd. £1 7s. 6d. net.

NOTES AND NEWS

COURTS-MARTIAL APPEAL RULES

The Courts-Martial Appeal (Amendment) Rules 1961 (S.I. 1961 No. 1015), coming into operation on 1st July, 1961, amend the Court-Martial Appeal Rules, 1952—(a) to prescribe the procedure of the Courts-Martial Appeal Court in proceedings preliminary or incidental to an appeal from that court to the House of Lords under ss. 10 and 13 of the Administration of Justice Act, 1960 (rr. 5 (3), 6 and 7). Rule 6 provides that an application to the Courts-Martial Appeal Court for leave to appeal, to extend the time for appealing or for legal aid, or for leave to be present at the hearing of such an application, should, unless made orally at the hearing before the court, be made, with appropriate modifications, in the form prescribed for making similar applications to the Court of Criminal Appeal; (b) to prescribe the procedure to be followed in the case of prisoners of war who have a protecting power within the meaning of the Geneva Conventions Act, 1957, and who have been convicted by a prisoner of war court-martial (rr. 3, 4, 5 (1) and (2) and 9); and (c) to adapt the provisions relating to the restitution of stolen property to take account of the coming into operation of the Naval Discipline Act, 1957, and the Administration of Justice Act, 1960 (r. 8). The Courts-Martial Appeal (Amendment) Rules, 1954 and 1955, are revoked, but r. 4 re-enacts the substance of the Rules of 1954.

DOUBLE TAXATION RELIEF (U.S.A.)

The Double Taxation Relief (Taxes on Income) (U.S.A.) (No. 3) Regulations, 1961 (S.I. 1961 No. 985), which came into operation on 1st June, 1961, relieved paying agents in this country of the obligation to deduct United States withholding tax from dividends paid to persons in certain overseas territories and to accord to those persons the same treatment as that accorded to persons resident in the United Kingdom.

The dividends of United States companies paid to persons not resident in the United States are normally subject to United States withholding tax at the rate of 30 per cent. Under the convention between the United Kingdom and the United States for the relief of double taxation this tax is reduced to 15 per cent. where the shareholder is a resident of the United Kingdom. For this reason persons in the United States paying dividends to an address in the United Kingdom deduct tax at only 15 per cent. If the person beneficially entitled to the dividends is not a resident of the United Kingdom he is not entitled under the convention to this reduction. The Double Taxation Relief (Taxes on Income) (U.S.A.) Regulations, 1946, accordingly provide that where such dividends are paid through a paying agent in the United Kingdom to persons not resident in the United Kingdom the paying agent shall instead deduct an additional 15 per cent. United States withholding tax and account for it to the United Kingdom Commissioners of Inland Revenue, who will then account for it to the United States taxation authorities.

In certain other conventions concluded by the United States, provision is similarly made for the reduction of United States withholding tax to 15 per cent. on dividends paid to residents of the other territory. These regulations authorise paying agents in the United Kingdom to refrain from deducting any additional United States withholding tax when they pay United States dividends to residents of such territories or to residents of the United States who, under United States law, are not subject to the withholding tax. Similar treatment is already available, under the Double Taxation Relief (Taxes on Income) (U.S.A.) (No. 2) Regulations, 1955, for dividends paid to residents of the Republic of Ireland.

SOLICITORS *v.* ESTATE AGENTS

The annual cricket match between Harrow solicitors and Harrow estate agents is to be held on 28th June at the Old Merchant Taylors ground at Durrants, Croxley Green. Mr. John C. Christie is arranging the match under the aegis of the Central and South Middlesex Law Society.

LAND REGISTRY NOTICE

In view of the forthcoming extension of compulsory registration of title on sale to the Cities of Manchester and Salford it has been decided to set up an office in Manchester where solicitors and their clerks may inquire as to land registration practice and procedure.

This office will, as from 3rd July, 1961, be open from 10.30 a.m. to 3 p.m. on Mondays, Wednesdays and Fridays. The address is as follows:—

H.M. Land Registry,
Third Floor,
64 Bridge Street,
Manchester.

Telephone Number: Deansgate 6028.

H.M. Land Registry,
Lincoln's Inn Fields,
London, W.C.2.

Societies

Members of the CENTRAL AND SOUTH MIDDLESEX LAW SOCIETY and their guests attended at the Guildhall, Westminster, for a cocktail party on 19th May. Guests of honour were Colonel Sir Joseph Haygarth, chairman of the Middlesex County Council, and Lady Haygarth, and Mr. Arthur Driver, vice-president of The Law Society.

THE WEST LONDON LAW SOCIETY is holding a general members' meeting at the Dominions Hotel, Lancaster Gate, W.2, on Tuesday, 27th June, at 6.15 p.m. This will be followed by an informal dinner, commencing at 7.15 p.m., for members and guests at which Mr. Philip Asterley Jones, Editor of THE SOLICITORS' JOURNAL, will talk on "The Legal Profession in the Next Ten Years." The president of the society, Mr. Geoffrey Freeborough, and Mrs. Freeborough, are inviting members of the society and their ladies to a garden party to be held at their Epsom home on 15th July.

THE MEDICO-LEGAL SOCIETY held its annual general meeting on 8th June, when the following officers were elected: president, Dr. Keith Simpson; vice-presidents, Sir Joseph Simpson, K.B.E., Mr. N. Leigh Taylor, M.B.E., and Dr. Francis H. Brisby; hon. treasurer, Mr. Phineas Quass, O.B.E., Q.C.; hon. secretaries, Mr. Meadows Martineau and Dr. Donald G. Rushton. The meeting was followed by the reading of the paper which won the president's essay prize by the winner, Mr. Leonard M. Minty, the essay being entitled "Insanity and Diminished Responsibility Defences on Criminal Charges."

Personal Notes

MR. FRANCIS OSBORNE BATES, solicitor, of Derby, has retired after forty-two years in practice.

MR. FREDERICK EDWARDS, town clerk of Esher for the past 27 years, was presented with a camera to mark his retirement at a meeting of the council on 23rd May.

MR. ROY GEORGE HUXTABLE, M.B.E., solicitor, has been appointed secretary of the Gas Council with effect from 1st August, 1961.

MR. JOHN DAVID FAUX JACKSON, solicitor, of Brighton, was married on 27th May to Miss Mary Elizabeth Osborne.

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Westgate-on-Sea.—BENEFIELD & CORNFORD, Town Hall Buildings, Thanet 31010.

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Harrow.—P. N. DEWE & CO., See "London Suburbs" Section. Established 1925.
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(Continued on p. xxii)

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Applications stating age, education, qualifications, experience, supported by three references to the Divisional Chief Staff Officer, 40 Portland Street, Manchester, 1, within ten days.

PENGE URBAN DISTRICT COUNCIL**COUNTY OF KENT****APPOINTMENT OF DEPUTY CLERK AND SOLICITOR**

Applications are invited from Solicitors with Local Government experience for this appointment. Salary within Grades APT IV/V (maximum £1,480), plus London weighting. Commencing salary in accordance with experience.

Applications stating age, and full details of qualifications and experience, together with the names and addresses of two Referees must reach me not later than the 1st July, 1961. Conveyancing disqualifies.

Penge is in the Review Area of the Royal Commission on Local Government in Greater London.

PERCY J. BUNTING,
Clerk of the Council.

Town Hall,
Anerley Road, S.E.20.
9th June, 1961.

HARLOW URBAN DISTRICT
require an**ASSISTANT SOLICITOR**

Salary APT. V (£1,310–£1,480) or Scale A (£1,400–£1,565) according to experience. Appointment subject to a satisfactory medical examination.

The successful applicant will rank in the department immediately below the Deputy Clerk and will be entitled to casual user allowance if he has a car.

Housing available and reasonable removal expenses paid.

In addition to superannuation the Council have Widow's Pension and Injury Allowance Schemes. Good office conditions in a new Town Hall.

Harlow, with a population of 53,000 rapidly expanding to 80,000 offers wide legal and administrative experience (including committee work) to a keen applicant.

Applications, naming two referees, to be received by the Clerk of the Council, Town Hall, Harlow, not later than first post, 5th July, 1961.

ROTHERHAM RURAL DISTRICT COUNCIL

(Population 59,000)

ASSISTANT SOLICITOR

Applications are invited from Solicitors for the above appointment in the Department of the Clerk to the Council.

Local Government experience not essential, but candidates should have some experience in conveyancing and general legal work.

Salary within the range Grade A.P.T. V—Lettered Scale "A" (£1,310–£1,565), the commencing point to be dependent upon the experience of the successful candidate.

The appointment is permanent and will be subject to the provisions of the Local Government Superannuation Acts, 1937 and 1953, and determinable by either party upon one month's previous notice in writing.

The post offers excellent opportunities of gaining experience in the legal and administrative work of a large progressive Rural Authority.

The Council will provide housing accommodation for the successful candidate, if required.

Applications, together with the names and addresses of two persons to whom reference can be made, should be received by me not later than Friday, the 30th June, 1961.

E. F. L. DANBURY,
Clerk to the Council.

Council Offices,
Moorgate,
Rotherham, Yorks.

June, 1961.

COUNTY BOROUGH OF NEWPORT**TOWN CLERK'S DEPARTMENT****CONVEYANCING CLERK**

Conveyancing Clerk required—A.P.T. II (£815 to £960 per annum). Commencing salary according to experience. Local Government experience not essential. Tenancy of Council house or flat available if circumstances warrant. Approved furniture removal expenses paid. Five-day week.

Applications, giving age, full details of experience and qualifications, with names of two referees, to Town Clerk, Civic Centre, Newport, Mon., by 26th June, 1961.

CITY OF SALFORD**ASSISTANT SOLICITOR**

Assistant Solicitor required. Salary scale £1,310–£1,480. Commencing salary according to qualifications and experience.

Municipal experience desirable but not essential. Must be good advocate.

Applications, with names of two referees, to the undersigned by 1st July, 1961.

R. RIBBLESDALE THORNTON,
Town Clerk.

Town Hall,
Salford, 3.

FRIMLEY AND CAMBERLEY URBAN DISTRICT COUNCIL**CLERK'S DEPARTMENT**

Applications are invited for the permanent superannuable appointment of—

ASSISTANT SOLICITOR—Scale "A"
(£1,565)

Local Government experience is desirable but not essential. Car allowance will be granted on the Council's Casual User Scale.

Housing accommodation will be provided, if required, where the successful applicant is married and financial assistance will be granted towards removal expenses.

Applications giving details of age, experience and qualifications should be forwarded to the undersigned together with the names and addresses of two referees by the 4th July, 1961.

K. S. HARVEY,
Clerk of the Council.

CITY OF HEREFORD**ASSISTANT SOLICITOR**

Applications are invited for the post of Assistant Solicitor at a salary within the Grades A.P.T. III/IV (£960–£1,310).

Previous local government experience not essential.

Application forms are obtainable from me, and should be returned to me by the 7th July, 1961.

Housing accommodation will be available to the successful applicant, if required.

J. A. WESTON,
Town Clerk.

Town Hall,
Hereford.
June, 1961.

NEW SCOTLAND YARD

PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Starting salary £1,150 at age 24 to £1,703 at age 35 (or over). Scale maximum £1,937. Non-contributory pension. Good prospects of promotion. No previous experience required of criminal prosecutions. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

NEW ZEALAND**GOVERNMENT LEGAL OFFICERS**

The New Zealand Government invites applications from barristers or solicitors or graduates in Law for appointment to the permanent staff in several Departments of the New Zealand Public Service.

Salary on appointment from £900 to £1,120 according to qualifications and experience.

Duties, details of experience desirable, general information on conditions of employment in the New Zealand Public Service and application forms will be sent on request to the High Commissioner for New Zealand, 415 Strand, London, W.C.2, with whom applications will close on 31st July, 1961.

Please quote reference B13/10/2 when enquiring.

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Classified Advertisements



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APPOINTMENTS VACANT

ASSISTANTS urgently required, qualified or unqualified, in expanding Home Counties practice. Stage age, experience and salary required.—Box 7823, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor for medium-sized practice, East Herts, to assist mainly with common law but some conveyancing. Liberal salary according to qualifications and experience. Free house if required. Experienced energetic unadmitted assistant would be considered.—Box 7714, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

LITIGATION.—Efficient clerk required to take charge of Solicitors busy debt collecting department. Good salary will be paid to the right person. Hol. 2366 or Box 7825, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

BERKSHIRE, Market Town. Young Clerk with conveyancing, probate and general experience required in small family practice to deal with all types of work and train as Managing Clerk. Good prospects for a man with initiative and adaptability.—Box 7826, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Manager required by West End Firm (Old-Estd.) to augment busy Dept. Suit newly admitted Solicitor with sufficient varied experience or un-admitted ambitious man to whom free Articles would be granted, if required. Salary in £1,250 range.—Box 7827, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PROBATE Manager required by West End Firm (Old-Estd.) to take charge of Dept. from Partner. Knowledge of Company work advantage. Suit newly admitted Solicitor with sufficient qualifications or un-admitted ambitious man to whom free Articles would be granted, if required Salary in £1,250 range.—Box 7828, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WEST END Solicitors (Old-Estd.) inundated with Litigation require Assistant Solicitor. Suit newly admitted man of sufficient experience and initiative or ambitious Managing Clerk with the right qualifications to whom free Articles would be granted. Salary in £1,250 range.—Box 7829, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

A SCOTTISH BANK

has several vacancies in its

TRUSTEE DEPARTMENT

in London for staff to be engaged on Trust Administration work.

Desired age group—25 to 30.

Previous experience is desired but not essential. Salary will be in accordance with age and experience.

Good conditions, pension and future prospects are offered to suitable applicants.

Please write giving full details of experience and previous employment to Box 7824, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Assistant required to assist Principals; City office; closed on Saturdays. Applicants' present holiday arrangements would be honoured. Good salary for experienced man. Good prospects.—Box 7830, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

JUNIOR Cashier required by Solicitors in St. James's. Neatness and accuracy desired. Good prospects. Five-day week. Pension scheme. Write stating age and salary required.—Box 7784, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Cashier required to keep sets of books in Ilford and London branch offices of Romford solicitors. Some knowledge of Probate useful but not essential.—Write Box 7831, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

THERE is a vacancy in the Head Office Accident Department of an old established expanding non-tariff office in Manchester for a clerk in his early twenties who:—

(1) possesses some Accident (Non-Motor) experience;

(2) is studying for or has passed the examination of the Chartered Insurance Institute. Annual payment for Chartered Insurance Institute qualification including part successes. There is a non-contributory Pension Scheme in force and the prospects for advancement are extremely good. Holiday arrangements honoured.—Box 7832, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

MANCHESTER. Several vacancies exist for the positions of Section Head and Senior Correspondent in the Head Office Claims Department of a non-tariff company. Salary in the region of £850. Generous A.C.I.I. and F.C.I.I. bonuses. Non-contributory Pension Scheme. Holiday arrangements honoured.—Box 7833, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SENIOR CONVEYANCER (admitted or unadmitted) capable of working with little or no supervision and preferably experienced in estate development required by old established firm in South of England. Substantial and progressive salary, excellent working conditions; pension and life assurance schemes, existing holiday arrangements honoured. Assistance with housing and removal expenses if necessary.—Particulars please to Box 7834, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Assistant required: qualified or unqualified; newly admitted solicitor would be considered; good salary for right man; pension scheme available; five-day week; apply in writing to Messrs. Slater, Heelis & Co., 71 Princess Street, Manchester, 2.

STEVENAGE Solicitors require young Assistant Solicitor. Prospects of a partnership ultimately for a suitable applicant.—Apply Box 7835, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WIGAN.—Old-established practice require assistant, admitted or unadmitted; good knowledge and experience Conveyancing, Probate and General Practice. Work with or without supervision. Write, stating age and experience.—Box 7821, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WATFORD.—Conveyancing and Probate Assistant required. Salary £1,200 or more according to experience and ability. Good prospects. Housing assistance if required.—Box 7838, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

BANK has vacancy for Young Man (about 23) in their Executor and Trustee Department, experienced or interested in that work. Non-contributory Pension. Scale salary at 23, £545. Luncheon vouchers provided.—Write stating age and experience to Box SJ.729, c/o Hanway House, Clark's Place, E.C.2.

REQUIRED for West End Office of City Solicitors, young Solicitor to assist Partner dealing with Company, Commercial, Conveyancing and other matters. Excellent prospects of partnership for right person.—Write Box 7839, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

NEWPORT (Mon.) Solicitors require Assistant for Litigation (admitted or unadmitted). Prospects for suitable applicant. Assistance with housing, etc., if required. Please state details of experience, etc.—Box 7840, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted Managing Clerk with extensive experience in Company and Commercial Work. Excellent salary for the right man.—Box 7841, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor for Probate and Trust Work required by large Bedford Row Firm. Interesting and varied work. Write stating age, experience and salary required to Box 277, Reynell's, 44 Chancery Lane, W.C.2.

YOUNG Assistant Solicitor required by City firm. Fine prospects for the right man. Good all-round experience required. Interesting position. Salary up to £1,500.—Box 7799, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required by City solicitors in office in Croydon area. Salary £1,000 p.a. for the right man. Ideal working conditions. Friendly office.—Box 7800, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WINDSOR, Berks.—Medium-sized firm have vacancy for unadmitted conveyancing assistant. Pension scheme. Assistance with housing if desired. Pleasant offices. Youngish person with limited experience considered. Charles Coleman & Co., 20 Sheet Street, Windsor.

SHEFFIELD.—Young solicitor required by sizeable firm for common law matters. Little advocacy, excellent progressive post with prospects.—Box 7802, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by Blackpool firm for end of July. Recently qualified applicant requiring supervision would be considered.—Box 7803, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by East Midlands City firm, advocacy and common law, partnership prospects. Write giving details of age, experience and salary required.—Apply, Box 7819, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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**Classified Advertisements**

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APPOINTMENTS VACANT—continued

FARNFIELD & NICHOLLS of Gillingham, Dorset, owing to the death of a partner, require Assistant Solicitor with a view to partnership. Good prospects. Mainly conveyancing.

LONDON, N.W.1.—Solicitor or unadmitted managing clerk required for general practice. Good progressive salary by arrangement. Permanent position with good prospects for right applicant. Write with details of age and experience to Box 7804, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

ABLE, ambitious and energetic Solicitor aged between 30 and 40 required for expanding medium-sized London practice. Proposed early appointment as salaried partner with prospects leading to profit sharing partnership without the necessity of capital. Appropriate commensurate salary.—Box 7808, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WEST END firm (off Grosvenor Square) requires Litigation Managing Clerk to run the Litigation Department of an old-established general practice, with minimum supervision.—Box 7756, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

REQUIRED by Surrey (Redhill) Solicitors, Assistant Solicitor for County Court Department and to undertake advocacy. Newly admitted man considered.—Write Box 7769, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

CONVEYANCING Manager (around £1,500 p.a.) required by medium-size West End firm to take charge of department. Permanent and congenial position, varied work. Suit youngish man desiring better himself.—Box 7483, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PROBATE managing clerk required (male or female) by South-East London Solicitors; own office; minimum supervision or as required; Stenorette system; 3 weeks' vacation; salary according to experience.—Box 7320, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOUTHEND-ON-SEA.—Assistant Solicitor required for expanding practice mainly conveyancing and probate. Opportunity for energetic young man. Prospects of partnership, salary by arrangement.—Write stating age and experience to Box 7116, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

HORNCHURCH solicitors require conveyancing assistant (unadmitted). Must be capable of working without supervision. Salary by arrangement.—Box 7720, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

FLADGATE & CO., 70 Pall Mall, S.W.1, require young Conveyancer to work with or without supervision. Salary by arrangement according to experience. Holiday arrangements honoured. No Saturdays. Pension scheme. Good prospects for suitable applicant.

ASSISTANT Solicitor required for general work; able to work without supervision or with slight supervision; five-day week; salary by arrangement.—Write stating age and experience to Marcan & Dean, 20 Victoria Street, S.W.1.

ADMITTED Solicitor required as from September, 1961, for busy office in N.W. London suburbs. Applicant should be willing to cope with both litigation and conveyancing, with accent on the former. Salary around £1,000 per annum and definite prospects of junior partnership after satisfactory trial period.—Box 7817, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

BERKSHIRE.—Newly qualified Solicitor required as assistant in small general practice in busy market town. Box 7348, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS in Worcestershire health resort have vacancies for young Conveyancing Clerk and young Litigation Clerk. Both posts offer good opportunities for energetic and ambitious men (or women) looking for promotion to Senior Clerkships. Competitive salaries depending on experience. House available to rent for married man.—Box 7782, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

(VOLUNTARILY Disbarred) Barrister reading for Solicitors Final seeks congenial engagement (Consultant?) with high class firm. Some capital available. Norfolk or Country preferred but not essential.—Box 7493, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITOR (43) LL.B. of wide experience with substantial connection estate management and development seeks partnership (£2,500 approx) London—Brighton.—Box 7836, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOUTH AFRICAN Q.C. (aged 36) wishes to be articulated in London. Salary required. Available for interview 26th June—14th July.—Box 7837, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

SOLICITORS' Clerk, twenty years' experience Probate and Administration and general practice. London district or South preferred.—Box 7842, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PRACTICES AND PARTNERSHIPS

YOUNG solicitor with own growing practice wishes to purchase small/medium size London practice from solicitor contemplating retirement in near future.—Box 7771, Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

PREMISES, OFFICES, ETC.

BRIGHTON/HOVE, 101 Western Road, Hove, Sussex. Office to let on ground floor adjoining Estate Offices, rent £2 p.w. Telephone service if necessary.—Apply SHAW'S, F.A.L.P.A., M.R.San.I., "Estate House," 85 Shaftesbury Avenue, W.1. Telephone Gerrard 5851.

PROPERTY INVESTMENTS**INVESTMENTS REQUIRED**

ACTIVE enquiries in hand for good-class shop investments, blocks of flats, freehold ground rents and weekly investments of all types.—Details in confidence to Cowdrey, Phipps & Hollis, F.A.L.P.A., Investment Department, 140 Park Lane, Marble Arch, W.1. MAYfair 1329 (2 lines).

TRANSLATIONS

LEGAL DOCUMENTS and other miscellaneous matter (French, German and Italian); accurate rendering mailed day work received.

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SECOND Mortgage our speciality; £100-£1,000 available for Owner occupiers or for use as a deposit in house purchase. £2 6s. 8d. monthly repayment on each £100 borrowed.—**Cranbrook Mortgage Bureau**, Dept. C.F. 7, 49 Cranbrook Road, Ilford 3615 (3 lines).

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INTEREST OR PARTICIPATION
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SUBSTANTIAL FUNDS available as investment in acquiring businesses showing minimum £20,000 p.a. subject tax only. Management and professional advisors retained. Replies in confidence to: Ref. 72 J. T., Gosschalk, Austin & Wheldon, Solicitors, 30 Silver Street, Hull.

NAMEPLATES

NAMEPLATES in bronze, brass or plastics; Rubber Stamps; Sketches and estimates free.—Austin Luce & Company, 19 College Road, Harrow, Middlesex. Tel: HATch End 6680.

NAMEPLATES in bronze, brass and plastic; quotations and full size layout sent free; signwriting a speciality.—Please send wording to Abbey Craftsmen, Ltd., Abbey Works, 109A Old Street, London, E.C.1. Tel: CLE 3845.

INFORMATION REQUIRED

Mr. JOHN FRANCIS WILLIAM MERCER,
Deceased

Will any Solicitor or other having knowledge of any Will made by the above-named, late of 86 Petty France, London, S.W.1, and formerly of Farnborough, who died on 14th January, 1961, please communicate with Messrs. Kersey, Tempest & Latter, 15 Tower Street, Ipswich.

PERSONAL

DAVIS OF PORT STREET, PICCADILLY, MANCHESTER, 1.—For fine furniture at manufacturers prices. Walk round our three large showrooms, which are open daily until 6 p.m. (Wednesday and Saturday included). We are stockists of all the latest designs of furniture, carpets, mattresses, divans, 10-year guarantee. Also all domestic electrical equipment, etc. Special concession and credit facilities to members of the legal profession. Write to us for whatever you want—we can supply. No other introduction required. Tel: CEN 0638.

CARRINGTON & CO. LTD., offer to buy Jewellery, Silver and Gold items, both modern and antique. Highest prices given. Representative sent if requested. Valuations for probate, insurance, etc.—130 Regent Street, London, W.1. Tel. REG 3727.

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CHAncery 7509

WITTEN & CO.

322 HIGH HOLBORN, W.C.1

BOOKS AND PERIODICALS

THE "CORDEX" SELF-BINDING CASE specially designed to contain issues of THE SOLICITORS' JOURNAL is now available price 14s., post free. Capacity 26 issues and index. Issues easily inserted or removed.—The Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

WANTED—Second-hand law books in sets or parts, All England Law Reports, Halsbury's Laws of England, Times Law Reports, etc.—Write: N. Iny, 1 Mount Stewart Avenue, Kenton, Harrow, Middlesex, or phone evenings WORDSWORTH 5190.

VALUATIONS

ANTIQUE AND MODERN FURNITURE, Silver, Porcelain, Pictures, Books and all descriptions of Chattel Property VALUED FOR PROBATE, INSURANCE OR FAMILY DIVISION, or, if desired, included in specialised auction sales. Sales also arranged by tender or private treaty.—Phillips, Son & Neale, 7 Blenheim Street, New Bond Street, W.1. Telephone No.: MAYfair 2424. Est. 1796.

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Tapestries; Antique and Modern Oriental or European Carpets and Rugs valued for Insurance or Probate by internationally acknowledged connoisseurs and dealers established in London since 1907. Comprehensive reports and valuations can be augmented if desired by photography in colour. Yakoubian Bros. Ltd., 7 Milk Street, Cheapside, E.C.2. Tel.: Monarch 7255.

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£50,000 cash available to buy weekly or other houses, ground rents, etc. No comm. required. Any district.—Buyers' Agents: RAYNERS, 205 Lavender Hill, S.W.11. (BAT 8686.)

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WHY not have your issues of THE SOLICITORS' JOURNAL bound and preserve in permanent form those articles which are of lasting value to you? The Publishers can accept the issues for 1960 and earlier years for binding in Green or Brown, full cloth, titled on spine, at £1 13s. 6d. per volume, post free, or in Half Calf, titled on spine, at £2 8s. per volume, post free. Issues should be addressed to The Binding Dept., The Solicitors' Journal, Oyez House, Brems Buildings, Fetter Lane, E.C.4.

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COSTS**THE COSTS DEPARTMENT**
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Buildings, Fetter Lane, E.C.4.
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